

# A BRIDGE, A TAX REVOLT, AND THE STRUGGLE TO INDUSTRIALIZE: THE STORY AND LEGACY OF *ROCKINGHAM COUNTY v. LUTEN BRIDGE CO.*

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*Rockingham County v. Luten Bridge Co. is now a staple in most contracts casebooks. The popular story goes as follows: Rockingham County entered into a contract with the Luten Bridge Company to build a bridge over the Dan River. Shortly after work commenced, the county repudiated the contract. Nonetheless, the Luten Bridge Company continued with its construction project and sued the county for the entire bill. Judge John J. Parker, the long-time Chief Judge of the Fourth Circuit, ruled in the famous 1929 opinion that the county was liable only for the costs up until the time of breach, a sum of approximately \$1,900, plus the anticipated profit, and not for the entire bill that was closer to \$18,000. The case is used to illustrate the “duty to mitigate,” whereby a party to a contract against whom a breach has occurred is obligated to mitigate the damages resulting from that breach.*

*A closer look at the case reveals that the underlying dispute was more about the legitimacy of local government. The dispute emerged when angry taxpayers charged the county commissioners with pursuing a corrupt agenda on behalf of the industrialist who sponsored their political campaigns. But the conflict also revealed*

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*traditional tensions between the county's farmers and its mercantile mill owners and constituted a microcosm of the larger political conflict—endemic throughout North Carolina and the South—over investing in public improvements to promote industrialization. Judge Parker's opinion was an effort to arm county governments with the powers necessary to facilitate industrialization and secure good governance. The duty to mitigate damages was merely an afterthought.*

INTRODUCTION.....	1843
I. <i>ROCKINGHAM COUNTY V. LUTEN BRIDGE CO.: THE</i> <i>TRADITIONAL VIEW</i> .....	1845
A. <i>The Facts</i> .....	1846
B. <i>The Duty to Mitigate Damages</i> .....	1848
C. <i>A Gradual Climb</i> .....	1849
II.    A TALE OF A BRIDGE: THE COMPLETE STORY .....	1850
A. <i>The Marquess of Rockingham's County</i> .....	1851
B. <i>"Rockingham County's Magnate": B. Frank Mebane ...</i>	1854
C. <i>Mebane's Plan</i> .....	1859
D. <i>"The Blood of Our Fathers"</i> .....	1862
E. <i>A Contract, a Company, and a Divided County</i> .....	1868
F. <i>The Suit</i> .....	1879
G. <i>The Opinion, Revisited</i> .....	1884
III.   THE INTENDED SIGNIFICANCE: INDUSTRIALIZING NORTH CAROLINA'S HINTERLAND .....	1888
A. <i>Industrial Growth in North Carolina</i> .....	1888
B. <i>"The Children Do Not Play Baseball Together"</i> .....	1893
C. <i>A "Good Roads" State</i> .....	1894
D. <i>Judge John J. Parker</i> .....	1897
E. <i>The Opinion, Revisited Again</i> .....	1902
CONCLUSION .....	1906
A NOTE ABOUT SOURCES .....	1908



“Miles from anywhere, with no approaches and no connecting roads, the most beautiful bridge in the South springs in three magnificent arches across the historic Dan, a silhouette in virgin alabaster against the green hills of a wilderness.”

—Leaksville News<sup>1</sup>

## INTRODUCTION

On October 15, 1929, Horace Williams, the University of North Carolina’s famed professor and founder of its philosophy department,<sup>2</sup> wrote a letter to his friend and former student, Judge John J. Parker of the United States Court of Appeals for the Fourth Circuit, asking, “I have had in mind for some time to write and ask for copies of one or two of your decisions. It is stimulating to read them,

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1. *Settlement in Fishing Creek Bridge Muddle*, LEAKSVILLE NEWS (Leaksville, N.C.), Aug. 11, 1932, at 1.

2. Horace Williams taught at the University of North Carolina from 1890–1940 and left a colorful legacy. See generally ROBERT WATSON WINSTON, *HORACE WILLIAMS: GADFLY OF CHAPEL HILL* (1942); Michelle Jarboe, *Eccentric Professor Left Legacy to Tract: Williams Helped Shape University*, THE DAILY TAR HEEL (Chapel Hill, N.C.), Dec. 9, 2003, at 1.

also they give me pleasure.”<sup>3</sup> Parker wrote back eleven days later with a copy of his recently published opinion in *Rockingham County v. Luten Bridge Co.*<sup>4</sup>

Williams, who taught a course on logic to generations of UNC undergraduates, including Parker, and was an enthusiast of logical reasoning,<sup>5</sup> was thoroughly impressed with Parker’s work. He wrote back effusively, “There is something in your manner of reaching a decision that reminds me of Marshall. It is the analysis. If I had made the decision in the lower court on this case, then read your analysis, I should resign.”<sup>6</sup> Indeed, since its publication in 1929, the opinion has proceeded to leave an impression on generations of law students. *Luten Bridge*, a staple in most contracts casebooks, is known today as the paradigmatic case that demonstrates the duty to mitigate damages in contract law, whereby a non-breaching party is not compensated for avoidable performance after learning that the other party has breached or intends to breach.<sup>7</sup> But no matter how impressive the analysis, neither Williams nor Parker had any reason to suspect that *Luten Bridge* would reach generations of contracts students, for the case only tangentially involved a dispute over contract law.

When sending his *Luten Bridge* opinion to Williams, Judge Parker remarked that it was “a case involving an important question of county government in North Carolina.”<sup>8</sup> This Article revisits the

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3. Letter from Horace Williams to John Parker (Oct. 15, 1929), in JOHN J. PARKER PAPERS, at Box 23, Folder 426 (Southern Historical Manuscripts Collection, University of North Carolina, Chapel Hill, NC).

4. 35 F.2d 301 (4th Cir. 1929).

5. Judge Parker once said about Williams, “Old Horace opened my eyes and enabled me to see the relation between fact and the framework of the universe.” WINSTON, *supra* note 2, at 208.

6. Professor Williams’s reply letter reads:

My Dear Judge Parker,

There is something in your manner of reaching a decision that reminds me of Marshall. It is the analysis. If I had made the decision in the lower court on this case, then read your analysis, I should resign. Is it that so many are controlled by feeling rather than by the rational? How a judge could consider a man an officer after he had resigned, after the successor was appointed, is too much for me.

I enjoyed your analysis very much, then handed the opinion to one of the Professors of Law. Thank you very much for sending it.

I wish it were possible to run away for a week and spend the time in your Court. Logic is a despot. I work at it daily.

Letter from Horace Williams to John Parker (Oct. 31, 1929), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 23, Folder 426.

7. *Luten Bridge*, 35 F.2d at 307–09.

8. Letter from John Parker to Horace Williams (Oct. 26, 1929), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 23, Folder 426.

history of this famous case, examining original sources, the contemporary history, and the lives of those involved. Ultimately, it reveals that Parker was exactly right—the core of the dispute was not over the calculation of damages for contract breach but instead implicated important issues in local government law. Moreover, those legal issues were of great importance to Parker and his fellow North Carolinians at the time the case was decided. Those issues illustrated the state's struggle to industrialize, and they now offer a window into understanding how legal rules played a significant role during that seminal historical era.

We take on three objectives in this Article: we identify the essence of the case's original dispute; we uncover the opinion's true political and jurisprudential significance; and we tell a remarkable story, one that arose within a heated tax revolt pitting the county's farmers against its most celebrated industrialist. It is a story that also reflects a larger conflict, endemic throughout North Carolina and the South, that was ushered in by the political and economic challenges of the Industrial Revolution. We conclude that *Rockingham County v. Luten Bridge Co.* is not just a crisp illustration of the duty to mitigate damages but also offers many lessons into the era's history, its changing economy, and the subsequent demands on local government.

### I. ROCKINGHAM COUNTY V. LUTEN BRIDGE CO.: THE TRADITIONAL VIEW

Today, as the Smith River rolls through the community of Spray, North Carolina, it passes a series of skeletal textile factories that now stand silent but once hummed with electricity generated by the river's swift waters. As with many derelict factories across the country, the buildings' owners are trying to find alternative uses for these massive, often majestic buildings. The Rhode Island Mill, built in 1903, ceased all textile production in 1986 and has been turned into an apartment building.<sup>9</sup> The American, Nantucket, and Spray Cotton Mills, all closed since 2001, are targeted by developers for downtown redevelopment.<sup>10</sup> And the basement of the once-teeming Spray

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9. See Eric Heisler, *Eden Allows Restoration of Old Mill*, NEWS & RECORD (Greensboro, N.C.), Jan. 20, 1999, at B1.

10. Carla Bagley, *Mill Makeovers: Developers Weave Big Dreams of the Future Around Plans to Turn the Old Eden Buildings into Hotels, Theaters, and Condos*, NEWS & RECORD (Greensboro, N.C.) (Rockingham County ed.), June 12, 2005, at R1 (noting that the mills are targeted for development and that American and Nantucket mills closed in 1996 and 1997, respectively); see Eric Heisler, *Mill Closing Marks an Era's End*, NEWS &

Water Power & Land company store serves as the office for Three Rivers Outfitters, a firm that provides visitors to the rivers in North Carolina's northern Piedmont with canoes, kayaks, and entertaining history lessons about the area's colorful past. According to one of the company's proprietors, many of those visitors are current or former law students looking for a certain bridge at the center of a case they read in their contracts class.<sup>11</sup> The bridge, now known as Mebane's Bridge,<sup>12</sup> draws visitors because it is the permanent physical representation of one of the most famous cases in contract law.

The likelihood that a randomly selected law student has read *Rockingham County v. Luten Bridge Co.* is high. Of twelve widely circulated contracts casebooks, seven feature the 1929 opinion as a highlighted case<sup>13</sup> and two more discuss it in a squib.<sup>14</sup> Though the case is edited slightly differently among today's casebooks, a typical exposition of the facts is as follows.

#### A. *The Facts*

On January 7, 1924, the Board of Commissioners of Rockingham County decided by a three-to-two vote to award a contract to the Luten Bridge Company to build a bridge over the Dan River.<sup>15</sup> The opinion notes that "[m]uch feeling was engendered over the matter"

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RECORD (Greensboro, N.C.), Feb. 6, 2001, at A1 (noting that the Spray mill closed in 2001).

11. Interview with Jeffrey Johnston, Three Rivers Outfitters, in Eden, N.C. (July 2004).

12. The bridge was originally called the Fishing Creek Bridge. See *infra* notes 99–107 and accompanying text.

13. Casebooks that included an edited version of the *Rockingham County v. Luten Bridge Co.* opinion were, for example: RANDY E. BARNETT, *CONTRACTS: CASES AND DOCTRINE* 124 (3d ed. 2003); THOMAS D. CRANDALL & DOUGLAS J. WHALEY, *CASES, PROBLEMS, AND MATERIALS ON CONTRACTS* 281 (4th ed. 2004); JOHN P. DAWSON ET AL., *CONTRACTS, CASES AND COMMENT* 41 (8th ed. 2003); LON L. FULLER & MELVIN ARON EISENBERG, *BASIC CONTRACT LAW* 271 (7th ed. 2001); JAMES F. HOGG & CARTER G. BISHOP, *CONTRACTS: CASES, PROBLEMS AND MATERIALS* 490 (1997); CHARLES L. KNAPP ET AL., *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* 848–51 (5th ed. 2003); and ROBERT E. SCOTT & JODY S. KRAUS, *CONTRACT LAW AND THEORY* 1050 (3d ed. 2002). This is not a comprehensive sample, and market share data is unavailable, but best efforts were employed to capture the case's current usage.

14. BRIAN A. BLUM & AMY C. BUSHAW, *CONTRACTS: CASES, DISCUSSION, AND PROBLEMS* 697 (1st ed. 2003); JOHN EDWARD MURRAY, JR., *CONTRACTS: CASES AND MATERIALS* 798 (5th ed. 2001). The casebooks that did not include *Rockingham County v. Luten Bridge Co.* prominently were JOHN D. CALAMARI ET AL., *CASES AND PROBLEMS ON CONTRACTS* (4th ed. 2004); RICHARD E. SPEIDEL & IAN AYRES, *STUDIES IN CONTRACT LAW* (6th ed. 2003); and ROBERT S. SUMMERS & ROBERT A. HILLMAN, *CONTRACT AND RELATED OBLIGATION: THEORY, DOCTRINE, AND PRACTICE* (4th ed. 2001).

15. *Rockingham Co. v. Luten Bridge Co.*, 35 F.2d 301, 302 (4th Cir. 1929).

and that a “result” of the vote was that W.F. Pruitt, one of the commissioners who had voted in favor of the project, resigned on February 11, 1924.<sup>16</sup> The next day, the county clerk appointed W.W. Hampton as a member of the board to succeed Pruitt,<sup>17</sup> and on February 21, Hampton and the two commissioners who opposed the contract passed a resolution “declaring that the contract for the building of the bridge was not legal and valid, and directing the clerk of the board to notify [the Luten Bridge Company] that it refused to recognize same as a valid contract, and that [the Luten Bridge Company] should proceed no further thereunder.”<sup>18</sup> But, “notwithstanding the repudiation of the contract by the county, the bridge company continued with the work of construction.”<sup>19</sup> On November 24, 1924, the Luten Bridge Company sued Rockingham County for \$18,301.07 for its completed work on the bridge even though the company’s incurred costs as of February 21 were estimated at only \$1,900.<sup>20</sup>

Judge Parker, writing on behalf of a unanimous panel for the United States Court of Appeals for the Fourth Circuit, ruled that the Luten Bridge Company was entitled only to the damages it had incurred prior to the county announcing its anticipatory breach.<sup>21</sup> He held that “after plaintiff had received notice of the breach, it was its duty to do nothing to increase the damages flowing therefrom.”<sup>22</sup> Judge Parker continued:

If A enters into a binding contract to build a house for B, B, of course, has no right to rescind the contract without A’s consent. But if, before the house is built, he decides that he does not want it, and notifies A to that effect, A has no right to proceed with the building and thus pile up damages . . . . In the case at bar, the county decided not to build the road of which the bridge was to be a part, and did not build it. The bridge, built in the midst of the forest, is of no value to the county because of this change of circumstances. When, therefore, the county gave

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16. *Id.*

17. *Id.* at 303.

18. *Id.*

19. *Id.*

20. *Id.* At the initial trial stage, neither party contested the issue of damages and only one party presented an expert to discuss the total amount of the contract. *See* Brief for Appellant at 9, *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301 (4th Cir. 1929) (No. 2873). Because the precise nature of damages was not resolved at the trial stage, Judge Parker remanded the case to the trial court. *Luten Bridge*, 35 F.2d at 309.

21. *Id.* at 307–09.

22. *Id.* at 307.

notice to the plaintiff that it would not proceed with the project, plaintiff should have desisted from further work. It had no right thus to pile up damages by proceeding with the erection of a useless bridge.<sup>23</sup>

### B. *The Duty to Mitigate Damages*

Contracts casebooks that include *Luten Bridge* use it to illustrate the duty to mitigate damages.<sup>24</sup> The opinion rejects the seminal English decision of *Frost v. Knight*,<sup>25</sup> in which Lord Cockburn allowed non-breaching parties to continue performing the terms of the contract until the breaching party actually fails to perform when the contract requires performance. Holding that *Frost* is not controlling in the United States, *Luten Bridge* instead rests on Samuel Williston's<sup>26</sup> assertion that "[t]here is a line of cases running back to 1845 which holds that, after an absolute repudiation or refusal to perform by one party to a contract, the other party cannot continue to perform and recover damages based on full performance."<sup>27</sup> The opinion cites a number of earlier cases for support, including *Clark v. Marsiglia*,<sup>28</sup> an 1845 case referred to by Williston, and *Novelty*

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23. *Id.*

24. *See supra* note 13.

25. (1872) 7 L.R. Exch. 111, 112 ("The promisee, if he pleases, may treat the notice of intention as inoperative, and await the time when the contract is to be executed, and then hold the other party responsible for all the consequences of non-performance . . .").

26. As a professor of law at Harvard University for more than forty years, Williston's work was highly influential and helped shape the course of contract law in the United States. *See Samuel Williston, in 1954 CURRENT BIOGRAPHY: WHO'S NEWS AND WHY* 651, 651 (Marjorie Dent Candee ed., 1954) (referring to Williston as "the dean of the American legal profession").

27. *Luten Bridge*, 35 F.2d at 307 (quoting 3 SAMUEL WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 1298 (2d ed. 1929)). In his treatise, Professor Williston observed that if given expectation damages, it is to nobody's benefit if the non-breaching party continues performance. 3 SAMUEL WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 1298 (2d ed. 1929) [hereinafter 3 WILLISTON ON CONTRACTS]. The breaching party obviously has stated that it does not want performance to continue, so they do not benefit. *See id.* The plaintiff likewise does not benefit because they will be awarded all their costs plus the profits they expected to make if both sides had performed as stated in the original contract. *See id.* "If he receives this it is equally advantageous for him to use his time otherwise." *Id.* Ironically, Williston in other writings was highly critical of the anticipatory repudiation doctrine, *see Samuel Williston, Repudiation of Contracts*, 14 HARV. L. REV. 317, 323-25 (1901), but was also critical of *Frost*, suggesting instead that as anticipatory repudiation became increasingly accepted, the injured party should not be permitted to continue performance, *see* 3 WILLISTON ON CONTRACTS, *supra*, § 1298.

28. 1 Denio 317 (N.Y. Sup. Ct. 1845). In *Clark*, the plaintiff was employed to repair pictures for the defendant. *Id.* at 317. Midway through the contract, the defendant notified the plaintiff that his services would no longer be needed. *Id.* Undeterred, the



*Advertising Co. v. Farmers' Mutual Tobacco Warehouse Co.*,<sup>29</sup> a case that had been recently decided by the Supreme Court of North Carolina.<sup>30</sup>

Thus, *Luten Bridge* reaffirms the American rule that the non-breaching party has a requirement to mitigate any expected damages by neither continuing with performance nor augmenting costs after the other party announces an expected breach. The doctrines of anticipatory repudiation and the duty to mitigate are now well established in American jurisprudence and enshrined in both the Restatement of Contracts<sup>31</sup> and the Uniform Commercial Code.<sup>32</sup> Although Judge Parker was not the first legal mind to advance these concepts, and indeed his opinion follows a line of cases with similar holdings,<sup>33</sup> *Luten Bridge* offers a paradigmatic illustration of the utility of the American rule.

### C. *A Gradual Climb*

Following its publication in 1929, *Luten Bridge* made its first appearance in the 1937 edition of Williston's treatise, *Williston on Contracts*, as a citation to the very words that Parker quoted in the opinion, referencing "a line of cases in the United States, running back to 1845."<sup>34</sup> However, casebooks were slow to follow, and Williston's own casebook, *Cases on Contracts*, did not include *Luten Bridge* until its sixth edition, published in 1954.<sup>35</sup> Williston's prior

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plaintiff completed the work and sued for the full price of the contract. *Id.* The Supreme Court of New York held that the plaintiff could only recover those damages incurred before the defendant announced his intention to breach the contract. *Id.* at 318–19.

29. 186 N.C. 197, 119 S.E. 196 (1923). In *Novelty Advertising*, a company cancelled an order to purchase customized calendars. *Id.* at 198, 119 S.E. at 196. Nonetheless, the seller proceeded to manufacture and ship the items. *Id.* at 198, 119 S.E. at 197. The court held that the seller was not permitted to collect damages amounting to the full contract price. *Id.* at 200, 119 S.E. at 197.

30. *See id.* (holding that damages instead "are to be measured as of the time of the breach of the contract by the vendee")

31. RESTATEMENT (SECOND) OF CONTRACTS § 350 (1979) (stating that "damages are not recoverable for loss that the injured party could have avoided without undue risk, burden or humiliation").

32. U.C.C. § 2-610 (1978).

33. *See Clark*, 1 Denio at 318–19; *Novelty Adver.*, 186 N.C. at 199, 119 S.E. at 197 (holding that "when a buyer countermands an order for goods before they have been manufactured, and at a time when the seller can stop the work and thus mitigate his damages, the vendor should not be allowed to proceed with the work so as to aggravate the damages").

34. 8 SAMUEL WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 1298 (3d ed. 1937).

35. SAMUEL WILLISTON, A SELECTION OF CASES ON THE LAW OF CONTRACTS 999 (6th ed. 1954).

edition, published only six years earlier, did not mention the case and instead (like most other casebooks and treatises in the middle of the twentieth century) used *Clark v. Marsiglia* to illustrate the duty to mitigate.<sup>36</sup> Although *Luten Bridge* appeared in some casebooks and treatises in the 1940s,<sup>37</sup> it was not included heavily until the 1960s when American and English jurisprudence significantly differed on the procedural effects of an anticipatory repudiation.<sup>38</sup>

Today, *Rockingham County v. Luten Bridge Co.* holds a place in the pantheon of contract law cases, appearing prominently in casebooks and treatises and sparking sufficient intrigue to send anonymous law students on pilgrimages to Eden, North Carolina.<sup>39</sup> And though the Second Restatement of Contracts includes just a tiny fraction of case examples to illustrate the legal concepts embedded within, *Luten Bridge* is the first example used to illustrate the duty to mitigate damages.<sup>40</sup>

## II. A TALE OF A BRIDGE: THE COMPLETE STORY

In many judicial opinions, the facts of a case fail to capture the true story. Such a distinction is evident in *Luten Bridge*. Even a casual reading of Judge Parker's opinion reveals that there is more to

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36. See, e.g., WILLIAM HERBERT PAGE, 5 PAGE ON CONTRACTS § 2897 n.1 (1920) (finding the duty to mitigate damages to be "well-settled" law (citing *Clark*, 1 Denio at 317)).

37. The case appeared early in at least one casebook. EDWIN W. PATTERSON & GEORGE W. GOBLE, CASES ON CONTRACTS 904-06 (2d ed. 1941).

38. See Melvin A. Eisenberg, *Actual and Virtual Specific Performance, the Theory of Efficient Breach, and the Indifference Principle in Contract Law*, 93 CAL. L. REV. 975, 1023 n.95 (2005) (summarizing the American rule of anticipatory repudiation by describing the *Luten Bridge* holding, and then concluding, "[t]his is the American rule, although the English rule is different" (citing *White & Carter (Councils) Ltd. v. McGregor*, [1962] A.C. 413)).

39. See *supra* note 11 and accompanying text. For example, a picture of Mebane's Bridge is one of only seventeen pictures featured in the eighth edition of *Contracts, Cases, & Comment*. JOHN P. DAWSON ET AL.; CONTRACTS, CASES AND COMMENT 41 (8th ed. 2003). The others are of The Lady Adams (*Gray v. Gardner*), Hiram Walker and Walker's black angus (*Sherwood v. Walker*), the Mitchell residence and the ice house (*Mitchell v. Lath*), Shirley MacLaine (*Parker v. Twentieth Century-Fox*), Lady Duff-Gordon (*Wood v. Lucy, Lady Duff-Gordon*), Jack Dempsey fighting Gene Tunney and with Harry Wills (*Chicago Coliseum Club v. Dempsey*), contracts scholars Arthur Linton Corbin and Karl N. Llewellyn, and judges and justices Benjamin Cardozo, Learned Hand, Oliver Wendell Holmes, Ellen Ash Peters, and Roger Traynor. See *id.*

40. RESTATEMENT (SECOND) OF CONTRACTS § 350 illus. 1 (1979) ("A contracts to build a bridge for B for \$100,000. B repudiates the contract shortly after A has begun work on the bridge, telling A that he no longer has need for it. A nevertheless spends an additional \$10,000 in continuing to perform. A's damages for breach of contract do not include the \$10,000.").

the story than is presented in the case's nine published pages (or far less for an edited version in a casebook), and the facts presented leave as many questions as answers. The reader learns that a bridge company was hired by a county to build a bridge.<sup>41</sup> "Much feeling was engendered" over this decision, and one of the commissioners who voted for the bridge subsequently resigned.<sup>42</sup> His replacement, along with the remaining commissioners, told the bridge company to stop construction.<sup>43</sup> Yet the bridge was built anyway, "in the midst of the forest," "useless" to everyone.<sup>44</sup>

The reader's curiosity is piqued (it was our own curiosity that sparked this project), and this section responds with a detailed examination of the case's surrounding history. It describes Rockingham County, the community where the story unfolded, reveals the role of B. Frank Mebane, the county's towering figure in the first part of the twentieth century who devised the plan to build the bridge, and reports the political turmoil that ensued following the execution of Mebane's plan. With the complete story placed as a proper background, it then revisits the *Luten Bridge* opinion to discover the legal issues that were actually involved.

#### A. *The Marquess of Rockingham's County*

Rockingham County, named after the second Marquess of Rockingham, the British Prime Minister who repealed the Stamp Act in 1766, lies in the northern Piedmont of North Carolina between Guilford County and the Virginia border.<sup>45</sup> Today, the county roads string together a series of struggling towns, former bustling commercial centers that are shells of their former selves. Like many other towns in North Carolina that rose upon the strength of industrialization, Rockingham County's gloomy scene is the product of a changed global economy that left behind much of the county's business.<sup>46</sup>

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41. See *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301, 302 (4th Cir. 1929).

42. *Id.*

43. *Id.* at 303.

44. *Id.* at 307.

45. See *The History of Rockingham County, NC*, <http://www.rockinghamcountyhistory.com/id22.htm> (last visited May 10, 2006) (describing the historical traditions of the county).

46. See Carla Bagley, *Dan River Closing Mill; 490 People to Lose Jobs*, NEWS & RECORD (Greensboro, N.C.), Jan. 14, 2006, at A1. In this regard, the towns of Rockingham County are not unique. Much of North Carolina has been afflicted by economic forces that have sent jobs elsewhere. See, e.g., Jane Stancill, *Bowles Tolls a Bell but Offers Hope: State's Future Called Dire Without Better Education*, NEWS & OBSERVER (Raleigh, N.C.), Jan. 14, 2006, at B1 ("With manufacturing jobs vanishing,

Rockingham County enjoyed better times earlier this century, when tobacco and textiles propelled the South's economy forward. Reidsville lies on the southern side of the county and for many decades was the county's largest city. It was once a bustling agricultural center, a key location for the American Tobacco Company that produced nine out of ten cigarettes in the United States<sup>47</sup> and led North Carolina to produce more than ninety percent of the nation's tobacco supply.<sup>48</sup> On the northern side of Rockingham County are three towns, Leaksville, Draper, and Spray, that once represented the industrialization of the modern South and were emblematic of Rockingham County's burgeoning textile industry prominence.<sup>49</sup> The emergence of North Carolina as a textile leader occurred largely between the 1880s and 1920s and was precipitated by the state's abundant natural resources and relatively cheap labor.<sup>50</sup> By a conservative estimate, more than six new mills were built in North Carolina each year between 1880 and 1900, enabling the state to quickly supplant New England as the leading region for textile production.<sup>51</sup> Rockingham County contributed its share to the industry's growth. In Leaksville, Draper, and Spray—which in 1967 were consolidated into a single municipality, Eden<sup>52</sup>—the textile mills

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North Carolina will have to better educate more residents to compete in a global economy." (quoting Erskine Bowles, President, Univ. of N.C., Speech to UNC Board of Governors (Jan. 13, 2006)); Dan Chapman, *Rivals Unite Against China's Textile Juggernaut*, ATLANTA JOURNAL-CONSTITUTION, Oct. 17, 2004, at A1.

47. See MICHAEL OREY, ASSUMING THE RISK: THE MAVERICKS, THE LAWYERS, AND THE WHISTLE-BLOWERS WHO BEAT BIG TOBACCO 34 (1999).

48. See A Brief History of the Duke Family and Its Tobacco Empire, <http://www.ibiblio.org/maggot/dukehome/family.html> (last visited May 10, 2006); LINDLEY S. BUTLER, ROCKINGHAM COUNTY: A BRIEF HISTORY 77–78 (1982) (noting that Reidsville was for many years called the "Lucky City" because of its factory that produced Lucky Strikes).

49. See BUTLER, *supra* note 48, at 72–81.

50. See *infra* notes 288–91 and accompanying text; The Changing Landscape of the Erwin Mills Area, <http://www.owdna.org/mill.htm> (last visited May 10, 2006).

51. The Changing Landscape of the Erwin Mills Area, *supra* note 50. A more liberal estimate concluded that "[t]he number of cotton textile mills multiplied at a hundred per decade after 1880." Sydney Nathens, *The Quest for Progress: North Carolina, 1870–1920*, in *THE WAY WE LIVED IN NORTH CAROLINA* 350, 388 (Joe Mobley, ed. 2003).

52. See Heisler, *supra* note 10; see also City of Eden, <http://www.ci.eden.nc.us/links/consolidation.htm> (last visited May 10, 2006) ("The origin of the name of Eden dates back to 1728, when English planter and aristocrat Colonel William Byrd and his surveying party entered the Dan Valley. The Crown appointed Byrd as a commissioner, with responsibility for establishing a dividing line between Virginia and North Carolina. Awed by the physical beauty of the land, Byrd wrote this entry in his diary: 'This is a land rich even unto the fabled lands about Babylon. The air is wholesome, and the soil equal in fertility to any in the world.' He further described it as the 'Wonderful land of Eden.' " (quoting Alva W. Stewart, *A New Togetherness*, AM. CITY, Mar. 1970, at 79)).

employed almost half of the county's residents,<sup>53</sup> and the number of looms in the county nearly doubled between 1900 and 1920.<sup>54</sup> Symbolizing this textile dominance was the presence of retail giant Marshall Field and Company, which brought textiles produced in Rockingham County to its stores across the country.<sup>55</sup>

Reidsville and Eden—separated by a mere twelve miles—represent Rockingham County's past dominance in two former staples of the Southern economy.<sup>56</sup> According to locals, there has always been a palpable sense of animosity between the two communities.<sup>57</sup> Perhaps some of this animosity can be explained by the differences in the economic activity of the communities. The tensions between Reidsville's more traditional agricultural sectors and Eden's burgeoning industrialism have produced some long-lasting and bitter political and social schisms.<sup>58</sup> But for those who need a physical reminder of that animosity, it is represented by a natural barrier: the Dan River.

The Dan River stretches from Belcher Mountain in Patrick County, Virginia, and ends in a confluence with the Staunton River, which combines with the Dan to make the Roanoke River.<sup>59</sup> As it winds its way eastward, the Dan crosses the state line between North Carolina and Virginia eight times, and has long served an integral role in the transportation of people and goods.<sup>60</sup> In the nineteenth century, the main mode of transportation on the river was by bateau, a type of flat-bottomed boat, and bateau access was instrumental to the establishment of towns all along the length of the river.<sup>61</sup> As more people settled along the river, and particularly as regional demand grew for manufactured goods, there was a greater need for bridges to

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53. For example, the three cities had approximately 14,000 residents, and the twelve mills employed a total of 5,650 workers. Harriet L. Herring, *The Outside Employer in the Southern Industrial Pattern*, 18 SOC. FORCES 115, 120 (1939).

54. See Thomas W. Hanchette, *Charlotte's Textile Heritage*, <http://www.cmhpf.org/educationhanchetttextile.htm> (last visited Aug. 29, 2006).

55. See BUTLER, *supra* note 48, at 72.

56. *Id.* at 76–81.

57. E-mail from Bob Carter, Director, Rockingham County Historical Society, to Barak Richman, Associate Professor of Law, Duke Law School (Apr. 13, 2006, 10:07:31 EST) [hereinafter Carter E-mail] (on file with the North Carolina Law Review).

58. See *infra* Part III.

59. See BUTLER, *supra* note 48, at 1; Forrest Altman, *Adventures in the Dan River Basin*, [http://www.danriver.org/articles/Adventures\\_in\\_the\\_Dan\\_River\\_Basin.pdf](http://www.danriver.org/articles/Adventures_in_the_Dan_River_Basin.pdf) (last visited May 10, 2006).

60. Altman, *supra* note 59.

61. See BUTLER, *supra* note 48, at 61; Herring, *supra* note 53, at 118 (noting that “interest in water transportation resulted in a boom” to build towns).

connect the mills north of the Dan River to the markets and transportation infrastructure south of the river.

The first bridge to cross the Dan River was the Leaksville Covered Bridge, which was built in 1832, washed away in 1850, rebuilt in 1852, and finally collapsed into the river in 1943.<sup>62</sup> Since the covered bridge was never able to support large vehicles, the North Carolina Highway Commission planned a second, more substantial bridge that would be completed in 1924.<sup>63</sup> To one northern Rockingham industrialist, however, this was one bridge too few.

*B. Rockingham County's Magnate: B. Frank Mebane*

"It is quite safe to say that no story-book hero ever has a more romantic history than B. Frank Mebane, industrial tycoon, town builder, millionaire, philanthropist and patron of the arts. He was the most fabulous and colorful character to appear on the Leaksville community scene during the life of the town, and its mightiest personal force for a generation."

—A Character Sketch of B. Frank Mebane, 1955<sup>64</sup>

The central figure in Rockingham County's decision to build a new bridge at Fishing Creek was Colonel Benjamin Franklin Mebane, Jr.<sup>65</sup> Throughout the first quarter of the twentieth century, Mebane, a

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62. See W.E. TROUT III, *THE DAN RIVER ATLAS: REDISCOVERING RIVER HISTORY ON THE DAN*, SMITH'S AND BANISTER 29 (2003); Stella W. Anderson, *For Eleven Years, One Was Rockingham County's Roadless Bridge*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 24, 1937, at M5 ("The old covered bridge from which Leaksville's Bridge Street got its name was retired from service by the State Highway Commission recently after a hundred years of use. Built in 1830, it was washed away by the turbulent Dan in 1852. Thereafter it was restored as a toll bridge and so operated during the administration of Governor Morehead."). The county purchased the covered bridge in the 1880s and converted it into a free bridge. See Carter E-mail, *supra* note 57.

63. Anderson, *supra* note 62; see also BUTLER, *supra* note 48, at 48–50. In addition to these early covered bridges, Rockingham County experimented with temporary makeshift bridges to meet the growing needs of commerce and transportation. As late as 1912, Rockingham County officials employed carpenters to build temporary wooden bridges over the smaller spans of the river. These bridges were hardly satisfactory, though; for example, during March 1912 alone, over thirty-five of these bridges were washed away. See Robert W. Carter, Jr., *20th Century Transportation*, in THE HERITAGE OF ROCKINGHAM COUNTY 63, 65 (Charles Dyson Rodenbough ed., 1983) [hereinafter HERITAGE OF ROCKINGHAM COUNTY]. Today, ten bridges span the Dan in Rockingham County, three in modern Eden. TROUT, *supra* note 62, at 29.

64. C.P. Robertson, *A Character Sketch of B. Frank Mebane* (1955), reprinted in 29 J. OF ROCKINGHAM COUNTY HIST. & GENEALOGY 25, 26 (2004).

65. Though Mebane was educated at the Bingham Military School, in Mebane, N.C., he never served in the military and earned the nickname "Colonel" from his friends. *Id.*; Brenda Marks Eagles, *Mebane, Benjamin Franklin, Jr.*, in 4 DICTIONARY OF NORTH CAROLINA BIOGRAPHY 245, 245 (William S. Powell ed., 1991).

flamboyant industrialist living in a changing South, was the undisputed king of Rockingham County. In his time, Mebane's power and notoriety seemed limitless. Contemporaries noted that he was "the ideal of a cavalier, young, successful, brave and handsome—and he knows how to sit on a horse."<sup>66</sup>

Mebane exploited this power and his oversized personality to reign supreme over a wide variety of local industries. The Rockingham industrialist's vast enterprises included raising cattle, running a variety of publishing companies,<sup>67</sup> managing the Imperial Bank and Trust Company, and establishing the Spray Institute of Technology.<sup>68</sup> Mebane even attempted to build a textile school in Spray to train young individuals in the crafts of the textile trade<sup>69</sup> and sought to hire the prominent educator Charles McIver<sup>70</sup> to oversee the school.<sup>71</sup> But Mebane's primary enterprise—and the one in which he left an indelible imprint on the county—was textile manufacturing.<sup>72</sup> During his reign, Mebane saw northern Rockingham Country transform from a sleepy rural community into a thriving industrial center, featuring new factories, roads, and bridges. Indeed, much of Rockingham County's growth was a byproduct of Mebane's own industry.<sup>73</sup>

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66. B. Frank Mebane, *NEWS & OBSERVER* (Raleigh, N.C.), Oct. 21, 1905, at 1; *see also* Russ Edmonston, *Bridge Is Tribute to Entrepreneur*, *GREENSBORO DAILY NEWS* (Greensboro, N.C.), Dec. 26, 1976, at G-1. The article states that Mebane was "as sharp a promoter, an entrepreneur, as the Gilded Age produced. He just about created the Eden textile industry singlehandedly. He was the Fieldcrest of that period." *Id.* The article also quotes a local attorney, saying "it's generally conceded about Mr. Mebane . . . that no man before or since ever lived in that area to possess such brilliant capacities to do great deeds." *Id.* The article concludes by noting that Mebane was "[s]o great and powerful that he could build a bridge to nowhere and from nowhere and leave people wondering whether he paid for it or got the county to pay for it." *Id.*

67. C.P. Robertson, *He Was Rockingham County's Most Interesting Citizen*, reprinted in *THE ADVISOR*, Dec. 1975, at 21.

68. *See* Eagles, *supra* note 65, at 245.

69. Lawrence McCrae, *Letter to the Editor: The Textile School*, *GREENSBORO DAILY NEWS* (Greensboro, N.C.), (undated) (on file with the Mebane Collection, Historical Collections Room, Rockingham Community College Library).

70. Charles Duncan McIver is recognized as the founder of the University of North Carolina at Greensboro. He was an advocate for education and specifically became known as a crusader for women's education. Today, UNC-Greensboro's McIver Street, McIver Building, and McIver Parking Deck are named after him. *See generally* ROSE HOWELL HOLDER, *MCIVER OF NORTH CAROLINA* (1957).

71. McIver ultimately turned down the offer and the school was never built. *Id.* at 240-41.

72. *See* Eagles, *supra* note 65, at 245.

73. *Id.*

Mebane's aspirations likely had their roots in his upbringing. He was born in 1867 to a prominent family in Alamance County, North Carolina.<sup>74</sup> His ancestors, after whom the town of Mebane, North Carolina was named,<sup>75</sup> settled in the area in the eighteenth century, and were instrumental in North Carolina's early political and industrial development.<sup>76</sup> His father, B.F. Mebane, Sr., made the family fortune marketing a patent medicine called Taraxacum Compound that developed a national following,<sup>77</sup> and the senior Mebane's financial successes led him to represent Alamance County in North Carolina's House of Representatives.<sup>78</sup>

Seeking the life of a fast-paced salesman,<sup>79</sup> the younger Mebane moved to New York City in the early 1890s but returned shortly thereafter to North Carolina to pursue an interest in textile production,<sup>80</sup> working first at the Cone Mills in Greensboro.<sup>81</sup> Mebane's first step towards becoming an industrial giant took place in 1893, when he met and pursued Lily Connolly Morehead.<sup>82</sup> Morehead was the granddaughter of John Motley Morehead, a former governor of North Carolina and the founder of the Leaksville

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74. The actual date of Mebane's birth is in dispute. Mebane's tombstone indicates he was born in 1867. Carter E-mail, *supra* note 57. C.P. Robertson, who knew Mebane, suggests in a character sketch written for a local Rotary Club that Mebane was born in 1870. Robertson, *supra* note 64. The Dictionary of North Carolina Biography states that Mebane was born in 1865. Eagles, *supra* note 65, at 245.

75. See City of Mebane, <http://www.cityofmebane.com/history.asp> (last visited Aug. 31, 2006) (describing Mebane's history).

76. *Id.* The Mebane family settled in Alamance County in the 1700s and has remained almost exclusively in central North Carolina, occupying political offices and serving prominent roles in several communities. Telephone Interview with G. Allen Mebane, President, Mebane Charitable Foundation, in Durham, N.C. (August 2004).

77. See William S. Powell, *Mebane, Benjamin Franklin*, in 4 DICTIONARY OF NORTH CAROLINA BIOGRAPHY, *supra* note 65, 244, 244-45.

78. *Id.*

79. See Robertson, *supra* note 64, at 26. Mebane's success as a young salesman became the material for legends. It was told that a few days after taking employment as a food products salesman in New York, he reported sales that were "stupendous, baffling and wholly unbelievable" to his employer, including "car loads of pickles and peppers, a thing unheard of before that time." *Id.* at 26-27. His manager "accused his young salesman of trying to play a prank . . . [and] couldn't believe the orders were genuine." *Id.*

80. See Bob Carter, *The Bridge to Nowhere: The Great Mebane's Bridge Controversy*, 29 J. ROCKINGHAM COUNTY HIST. & GENEALOGY 1, 4 (2004).

81. See Edmonston, *supra* note 66.

82. See Carter, *supra* note 80, at 2. Though the Moreheads were rich and powerful, the family legend has it that Mebane met Lily at an auction featuring many items that originally belonged to the family, which had fallen on hard times. Seeing an opportunity to impress the beautiful young woman, Mebane bought all of her possessions that were for sale and then promptly returned them to her. See Edmonston, *supra* note 66 ("[S]truck by Miss Morehead's beauty . . . he was supposed to have said, 'Ma'am, you'll not lose a thing at this auction today.'").



Cotton Mill.<sup>83</sup> The two were married after a brief courtship, and B. Frank Mebane became another leaf on the Morehead family tree, with all the political and economic benefits that came accordingly. Mebane and Lily then moved to Spray, where Mebane became the president of both the Leaksville Cotton and Woolen Mill Company and the Spray Water Power and Land Company.<sup>84</sup> Not coincidentally, both companies were created by Lily's father, James Turner Morehead.<sup>85</sup>

But Mebane was not content to merely hold the reins of his wife's family empire. In 1893, the same year they married, he bought 600 acres of land in Spray with the ambitious goal of building one new mill in the area every year.<sup>86</sup> Mebane did not achieve this goal, but he came close. The first mill to be completed under his watch was the Nantucket Mill in 1898, followed by the American Warehouse in 1899, the Lily Mill (named after his wife) in 1900, the Spray Woolen Mill in 1902, the Rhode Island Mill in 1903, and the German-American Stock Company Mill in 1905.<sup>87</sup> Though Spray, whose name was derived from the mist that came from the town's dam along the Smith River,<sup>88</sup> had a long history of industry, it had never witnessed such grand aspirations.

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83. Lily Morehead Mebane was an engaged and spirited woman, active in international relief efforts and a socialite. She was described as "a charming Southern woman . . . whose presence lent distinction, and the perfect ease of social aplomb to every social gathering which she graced." See *B. Frank Mebane*, *supra* note 66. After her husband died in 1926, Lily successfully ran as a Democrat for the State Assembly and represented Rockingham County from 1931–33. Her commitment to public service, which included helping establish the Rockingham County Library System and assisting relief efforts in war-torn Europe after World War I, earned her the recognition of being "without a doubt Rockingham County's most public spirited woman of the twentieth century." See Michael Perdue, *Rockingham's "First Lady": Lily Morehead Mebane*, 25 J. ROCKINGHAM COUNTY HIST. & GENEALOGY 58, 58 (2000).

84. See Carter, *supra* note 80, at 3.

85. See Powell, *supra* note 77, at 245. James Turner Morehead also met great success through one of his other children, John Motley Morehead III. The father-son combination developed an efficient process to manufacture calcium carbide, and their enterprise laid the groundwork for the multinational Union Carbide Corporation. See John Motley Morehead Foundation, <http://www.moreheadfoundation.org/about/history/jmm3.html>.

86. See BUTLER, *supra* note 48, at 78–79; *Pillowtex Throws in Towel*, S. TEXTILE NEWS (Charlotte, N.C.), Aug. 3, 2003, available at [http://www.textilenews.com/news/080303\\_1.html](http://www.textilenews.com/news/080303_1.html) (last visited Sept. 3, 2006).

87. *Benjamin Mebane Founds Fieldcrest in 1893*, CANNON NEWS, Jan. 1986, at 4.

88. The town was originally called "Splashy" after the effect from a waterpower dam. The town changed its name to "Spray" in an attempt to sound more dignified. Heisler, *supra* note 10.

Mebane's economic empire came to dominate Rockingham County, and by 1905, nearly all of Spray's 5,000 residents worked for him in some capacity.<sup>89</sup> Spray served as Mebane's base of operations, and, in a reference to Lowell, Massachusetts (a Northern bustling textile center founded by another forward-thinking industrialist, Francis Cabot Lowell),<sup>90</sup> the city was soon referred to as the "Lowell of North Carolina."<sup>91</sup> Mebane was also the founder of Draper, a town built to operate the German-American Stock Company Mill,<sup>92</sup> and was additionally deemed to be "the father of modern Leaksville."<sup>93</sup>

The price of expansion, however, caught up with Mebane. Despite his vast holdings, Mebane was forced to borrow heavily to finance his development, and by 1910 he had overextended his credit.<sup>94</sup> Mebane's primary creditor, Marshall Field & Company, promptly took control of all of Mebane's mills except Morehead Mills and Leaksville Mill<sup>95</sup> and consolidated them under its subsidiary, the Thread Mills Company.<sup>96</sup> Nonetheless, Mebane's aspirations did not

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89. See *B. Frank Mebane*, *supra* note 66 ("He has built a manufacturing town in Rockingham that contains a population of five thousand, all directly or indirectly connected with the enterprises built by his organization and direction.").

90. See generally Charles L. Sanford, *The Intellectual Origins and New-Worldliness of American Industry*, 18 J. ECON. HIST. 1 (1958) (describing the first Northern and Southern textile industrialists).

91. See *B. Frank Mebane*, *supra* note 66.

92. See BETTIE SUE GARDNER, *HISTORY OF ROCKINGHAM COUNTY, NORTH CAROLINA* 29 (1964). The town was named after "a Mr. Draper, who helped plan and build the first mill building of the German-American Stock Company on the site in 1906." *Id.*

93. GARDNER, *supra* note 92, at 29 ("He came while the town was still a struggling village. It was through his influence that the Marshall Field people were induced to invest real money in the town.").

94. See BUTLER, *supra* note 48, at 79 ("As a consequence of Mebane's ever-expanding vision, he greatly overextended his resources, [and became] damaged ... financially.").

95. See Powell, *supra* note 77, at 245. Despite having overextended his credit, Mebane was able to retain ownership of 8,000 acres of farm land in "the Meadows" area of Rockingham County; one author has surmised that Mebane was able to retain this land because Mebane was a "wheeler-dealer" who was both slick and clever with financial transactions. See Carter, *supra* note 80, at 4. Elaborating on this theory, a current historian noted that "Mebane didn't relinquish control [of the mills] without a fight, however. He adopted the tactic of wining and dining the men Marshall Field sent down from Chicago to look into the affairs of the mills, and on several occasions he won them over to his employment and staved off foreclosure. But finally, [F]ield sent an unsubornable man down." Edmonston, *supra* note 66.

96. In 1947 the company was renamed Fieldcrest Mills. It was later renamed Fieldcrest Cannon and was finally renamed Pillowtex. Though it long prospered in North Carolina's Piedmont, the company is now out of business. See *Benjamin Mebane Founds Fieldcrest in 1893*, *supra* note 87, at 4; see also Bruce Stokes, *In North Carolina, Serial Job*

wane after these massive setbacks. To the contrary, he had a plan—as ambitious and as audacious as any previous scheme—that would reassert his economic dominance in the region.

### C. *Mebane's Plan*

Mebane's plan, developed in the early 1920s, was reportedly to build a massive chemical factory in “the Meadows,” a large series of fields that the Spray Water Power & Land Company owned between Spray and Draper.<sup>97</sup> Interestingly, the specific industry and other details of Mebane's plans were “never released to the public and [are] still unknown to this day,” but he seemed to have believed that the new development would bring economic growth, sustained employment, and prosperity to the area.<sup>98</sup> However, Mebane's oversized dream, which might also have included attracting new residents near the chemical factory and laying the foundations of a new town, was hindered by the lack of infrastructure in the immediate area. At the time of Mebane's initial scheming, the only modern bridge across the Dan was the Highway 87 bridge (scheduled to be completed in 1924), which was one and one-half miles upstream from the Meadows.<sup>99</sup> To get to the bridge and cross the Dan from the Meadows, one would have to take the cumbersome path through the towns of Spray and Leaksville.<sup>100</sup> Seeking to facilitate passageway onto his property, Mebane decided an additional bridge should be built, this one near the confluence of the Dan River and the Fishing Creek.<sup>101</sup> As a result, much of the debate about whether to build

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*Casualties*, 36 NAT'L J. 2968, 2968–69 (2004) (describing the current plight of the textile industry in Rockingham County).

97. See Robertson, *supra* note 64, at 27; Carter, *supra* note 80, at 4. “The Meadows” is the current location of a large Miller Brewing Factory. TROUT, *supra* note 62, at 29.

98. See Carter, *supra* note 80, at 4.

99. *Id.* at 5. The Leaksville Covered Bridge was also available but could not be relied upon to support significant traffic. See *supra* note 63 and accompanying text.

100. Greg Lewis, *Bridge Is There but Who Paid Bill?*, GREENSBORO DAILY NEWS (Rockingham County ed.), Sept. 2, 1979, at L11.

101. See Carter E-mail, *supra* note 57. It might be possible that Mebane demanded efficient transportation to Reidsville in order to gain access to Reidsville's railroad depot, such that raw materials and manufactured products could be transported into and out of the Meadows factories. However, Leaksville and Spray had railroad depots as early as the 1880s. Mebane feuded frequently with the railroad operators, who did not offer him the discounts he demanded, and at one point Mebane began the North Carolina-Virginia Railroad simply to challenge the railroads' pricing policies. But road access to Reidsville would not have effectively challenged the railroads in Leaksville and Spray as the primary source of transport in the 1920s. Perhaps Mebane accurately foresaw the time when trucks would replace railroads. See *id.* This conflicting conjecture all indicates that it is not entirely clear why Mebane pursued the expensive bridge.

what would be called the Fishing Creek Bridge (and much of the controversy that accompanied its construction) was in fact a debate over B. Frank Mebane.

Even though Mebane would be the obvious primary beneficiary of the construction of a new bridge, the project was consistent with his larger plan to develop Rockingham County, so he wanted the county to pay for it. Thus, his plan began with the Rockingham County Board of Commissioners.<sup>102</sup> In 1922, Mebane, himself an avid Republican in heavily Democratic Rockingham County,<sup>103</sup> channeled his substantial charisma, powers of persuasion, and financial resources to recruit three Democrats to support his industrial agenda and run for the county's board of commissioners: Josiah Ferre McCollum, Thomas Ruffin Pratt, and William Franklin Pruitt.<sup>104</sup> Both Pruitt and McCollum were farmers, Pratt was a modest merchant, and all three were late in years.<sup>105</sup> Newspapers later reported that Mebane royally entertained the three at his lavish home, romancing the modest men with his wealth and personal charm, and persuaded them to align their interests with his own.<sup>106</sup> His appeal was successful, and all three signed on to Mebane's plan.<sup>107</sup>

Mebane quietly helped Pratt, Pruitt, and McCollum get elected to the five-member board of commissioners in the 1922 election along

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102. See Carter, *supra* note 80, at 4–5.

103. See BUTLER, *supra* note 48, at 74 (noting that “[t]he Democratic party retained its dominant position in county politics although five times in [the twentieth] century a non-Democrat carried the vote of the county in presidential elections”). Today, Rockingham County is still primarily Democratic, with 49.9% of voters registered Democrats and 32% registered Republicans. See North Carolina State Board of Elections, <http://www.sboe.state.nc.us/>. However, in the 2004 presidential election, 61% of the voters voted for George W. Bush, the Republican candidate. See CNN.com, Election 2004, <http://www.cnn.com/ELECTION/2004//pages/results/states/NC/P/00/county.003.html> (last visited Sept. 4, 2006).

104. What is known of the individuals' first names is derived from records left with the Rockingham County Historical Society. See Ruth McCollum Wilson, *The James McCollum Family*, in HERITAGE OF ROCKINGHAM COUNTY, *supra* note 63, at 406–07 (giving genealogical history lineage of J.F. McCollum); David M. Pratt, *The Descendants of Thomas Pratt*, in HERITAGE OF ROCKINGHAM COUNTY, *supra* note 63, at 490 (giving genealogical history of Thomas Ruffin Pratt); Jane Knight, *Robert Henry Pruitt*, in HERITAGE OF ROCKINGHAM COUNTY, *supra* note 63, at 503 (giving genealogical history of William Franklin Pruitt).

105. At the time Mebane made his recruitment pitch, McCollum was sixty-eight years old, see Wilson, *supra* note 104, at 406–07; Pruitt was forty-nine years old, see Knight, *supra* note 104, at 503; and Pratt was sixty-seven years old, Carter E-mail, *supra* note 57.

106. Carter, *supra* note 80, at 4 (citing REIDSVILLE REV., June 20, 1923; LEAKSVILLE NEWS, Oct. 31, 1924).

107. See Carter, *supra* note 80, at 4.

with two other Democrats—R.B. Chance and J.R. Martin.<sup>108</sup> Pratt, Pruitt, and McCollum promptly initiated Mebane's bridge plan, issuing a proposal to build a new bridge near Mebane's Meadows property.<sup>109</sup> Chance and Martin, however, were quite reluctant to fund the project, especially since another bridge would soon be completed only a mile and a half upstream.<sup>110</sup> Initially, the three Mebane loyalists were undeterred. In a March 19, 1923, resolution introduced by Commissioner W.F. Pruitt, the board of county commissioners deemed it "a public necessity" to build a bridge across the Dan River near its juncture with the Fishing Creek.<sup>111</sup> The proposal, receiving the support of Commissioners Pratt and McCollum while confronting strong opposition from Commissioners Martin and Chance, authorized the board to spend \$50,000 on the bridge and to employ an engineer to lead the construction effort.<sup>112</sup> At the same meeting, the board (led by Mebane's commissioners) voted three to two to build a hard-surface road from the town of Madison to Settle's bridge at an additional cost of \$250,000.<sup>113</sup> Neither of those figures, though, included the additional \$100,000 that would be needed to build a road to and from the Fishing Creek site—the bridge plan was initiated without a plan to provide road access.<sup>114</sup>

These very substantial public expenditures were unprecedented for Rockingham County and forced dramatic changes in the county's finances.<sup>115</sup> The county commissioners raised county property taxes to bankroll much of these new public works projects, and in 1923 alone increased county taxes from 0.95% to 1.35%, with 0.30%

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108. *Id.*

109. *Id.*

110. *Id.* This was the Highway 87 bridge completed in 1924. *Id.*

111. Meeting Minutes from the Rockingham County Bd. of Comm'rs (Mar. 19, 1923) [hereinafter Mar. 19, 1923 County Comm'n Minutes] (on file with the North Carolina Law Review).

112. *Id.*

113. Harry Hayden, *Rockingham County Folks Stirred by Proposal to Build Dan River Bridge*, July 5, 1923, at 1 (on file with the North Carolina Law Review). This second project has been described as "Mebane's bait to get support for his bridge plans from western Rockingham County, or a payoff to Pratt who lived in Madison." See Carter E-mail, *supra* note 57.

114. Hayden, *supra* note 113.

115. These planned increases in public works spending coincided with marked increases in the county's spending on public education. From 1920 to 1924, the county almost tripled its annual school expenditures, with most of the increase coming from servicing debt to build new rural schools. Compare Table III, Summary of Expenditures, Report of the Superintendent on Public Instruction, 1920–21, at 119, with Table III, Summary of Expenditures, Report of the Superintendent on Public Instruction, 1924–25, at 32.

designated as "road taxes."<sup>116</sup> The commissioners also issued new bonds at significant interest rates, increasing the county's debt by nearly one-third and leaving Rockingham County in 1925 with the third-highest indebtedness among North Carolina's ninety-eight counties.<sup>117</sup> Some individuals began to fear that if these public expenditures continued unabated, financing the resulting debt would require a tax hike to 2.7%, which would have been the highest in the state.<sup>118</sup> The rising taxes, and the apparent cronyism behind them and the project they financed, quickly led to a backlash against Mebane's proposal.

D. *"The Blood of Our Fathers"*

"[T]here has been established and is now existing in Rockingham [C]ounty an invisible government, dominated and controlled by one individual, administered from the dark, based upon the same arbitrary, autocratic and imperialistic principals [sic] as those put forth by George III of England and William II of Germany. So bold and notorious is this invisible government established and maintained in the interest of special privilege and the conduct and relationship and domination of certain officials of the county and particularly three commissioners that the people feel that a further submission thereto would be a sacrifice and surrender of the sacred principals [sic] of government vouchsafed by the blood of our fathers."

—A.D. Ivie, 3rd Mass Meeting<sup>119</sup>

The board's construction plans immediately drew the ire of many of Rockingham County's citizens. The heavily Democratic county was like many Democratic bastions of the time in the South, comprised primarily of rural voters opposed to substantial

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116. Editorial, *A Tale of a Bridge*, TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Mar. 20, 1924, at 1 (stating that of every \$1.35 collected, 30 cents was designated as road tax, 7 cents for county taxes, 43 cents for school taxes, and 55 cents to pay back interest). For comparison, the county tax in 1921 was 0.97%. See STATE OF N.C. COMM'R OF REVENUE, 1922 REPORT 522 (1923).

117. See STATE OF N.C. BD. OF ASSESSMENT & DEP'T OF REVENUE, 1926 ANNUAL REPORT 488 (1927); STATE OF N.C. COMM'R OF REVENUE, 1924 REPORT 466 (1925); STATE OF N.C. COMM'R OF REVENUE, *supra* note 116, at 488; see also Carter, *supra* note 80, at 1; *Biggest Mass-Meeting Yet Was Held at the County Seat Today*, REIDSVILLE REV. (Reidsville, N.C.), Feb. 4, 1924, at 1 [hereinafter *Biggest Mass-Meeting*] (detailing the events of the meeting held to protest the construction of the Fishing Creek Bridge).

118. See *A Tale of a Bridge*, *supra* note 116.

119. *Resolutions by Mass-Meeting*, REIDSVILLE REV. (Reidsville, N.C.), July 4, 1923, at 1.

government spending of any kind, particularly spending on public works designed to foster industrialization.<sup>120</sup> The county's rural taxpayers were especially hostile to public spending fueled by property taxes since they would bear most of the burden while most of the benefits would accrue to their industrializing neighbors.<sup>121</sup> Moreover, the board of commissioners had been elected in 1922 on a platform of fiscal restraint, so the additional spending was seen as both extravagant and a breach of the voters' trust by many of the commissioners' traditional supporters.<sup>122</sup> The *Reidsville Review*—the county's largest newspaper—also joined the opposition, launching repeated attacks on the commissioners who supported Mebane's plan. The newspaper, reflecting the political preferences of county Democrats, warned, "Taxpayers Sit Up and Take Notice—Said to be Only a Start of Some Great Program of County Expenditures."<sup>123</sup> And suspecting Mebane's role behind the plan, The *Review* added, "It is pointed out that the new bridge is not needed for public traffic and it is freely asserted that it will be built solely for the benefit of a very few private property owners."<sup>124</sup>

Two particular critics, R.S. Montgomery and A.D. Ivie, led the charge against Mebane's initiative.<sup>125</sup> Montgomery was a prominent Reidsville businessman, an owner of farmland, the president of Rockingham's First National Bank, and the director of the eleventh

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120. See *supra* note 103 and accompanying text; see also PAUL D. ESCOTT, *MANY EXCELLENT PEOPLE: POWER AND PRIVILEGE IN NORTH CAROLINA 1850–1900*, at 220–21 (1985) (noting that "industrialization undercut the basic values of [North Carolina]" and the rural voters "cherished a way of life, not just an occupation, and the core of what they valued was independence"). These sentiments perhaps were even more acute in Rockingham County than in other Southern communities. See Rockingham County Historical Society, <http://www.rockinghamcountyhistory.com/id22.htm> (last visited Aug. 31, 2006) ("[I]n a back country outpost somewhat isolated from the rest of the state, Rockingham was populated mainly by small farmers who owned their own land, which according to [early historian] Alexander Sneed, endowed them with 'an air of Independence, rarely to be met with in Countries where the laboring part of the community are Vessels and dependants [sic] on the Rich.'").

121. As Professor Fish rightly observes, Rockingham County was primarily farmland and its residents lived mostly in rural areas, leading farmers to foot the bill for any major government project. See Peter G. Fish, *Crossing Judge Parker's Luten Bridge*, 84 N.C. L. REV. 1913, 1922 (2006).

122. Anderson, *supra* note 62. The Democratic candidates' traditional supporters primarily were Democratic farmers, who opposed high spending for public works and high property taxes. See *infra* Part III.A.

123. *County Fathers Start Something!*, REIDSVILLE REV. (Reidsville, N.C.), Mar. 26, 1923, at 1 (quoted in Carter, *supra* note 80, at 5).

124. *Id.*

125. See, e.g., *Mass Meeting Held at Wentworth Monday Was Well Attended*, LEAKSVILLE NEWS (Leaksville, N.C.), Apr. 8, 1924, at 1.

district of the Tobacco Growers' Association.<sup>126</sup> Labeled by the *Reidsville Review* as a "tower of strength" and "a conservative, level headed business man," Montgomery identified with interests south of the river and was resistant to public expenditures to build up Mebane's industrial base at the expense of the entire county.<sup>127</sup> A.D. Ivie was a local attorney who later led the legal battles against the bridge plan.<sup>128</sup> Earlier in his career, Ivie actually served as Mebane's attorney,<sup>129</sup> but the two had ended their relationship, and Ivie began representing outside business interests in the county.<sup>130</sup> If Montgomery's involvement was precipitated by concern for Rockingham farmers and property-owning taxpayers, Ivie's involvement was motivated by his outrage at corruption and concern for the integrity of government.<sup>131</sup> They represented the two separate wells of discontent that fueled opposition to Mebane and his plan.

As political opposition gained momentum, Mebane's opponents mounted a legal attack on the project. A group of local lawyers, led by R.T. Burton, A.A. Walker, W.S. McKinney, and S.C. Penn, filed for an injunction in local state court to prevent the county board from entering into a contract to build the proposed bridge. The injunction request was filed by the lawyers "on their own part as citizens and taxpayers of Rockingham County, and on the part of all other citizens and tax payers who come in and make themselves parties to this action."<sup>132</sup> The bill of complaint went on to state that the bridge was being built:

for the benefit, largely of one person, solely, and at his demand and request and . . . ordering said bridge to be built is a flagrant abuse of the discretion vested in said Board of Commissioners by law, and is in violation of the rights of each plaintiff and all

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126. See Carter E-mail, *supra* note 57.

127. *R.S. Montgomery New Director*, REIDSVILLE REV. (Reidsville, N.C.), May 14, 1923, at 1.

128. See *Biggest Mass-Meeting*, *supra* note 117 (noting Mr. Ivie's comments in opposition to the bridge plan).

129. Editorial, *The Tale of a Bridge* (Series No. 29), TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Apr. 4, 1924, at 1. Ivie had also previously represented Rockingham County in the North Carolina State Senate. See Political Graveyard, <http://politicalgraveyard.com/bio/ivey-izlar.html> (last visited Sept. 4, 2006).

130. Editorial, *The Tale of a Bridge* (Series No. 18), TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Mar. 8, 1924, at 1.

131. See *Biggest Mass-Meeting*, *supra* note 117 ("[Mr. Ivie] pledged his best cooperation in ridding the county of [the commissioners] and restoring it to where it belongs.").

132. *Judge Grants a Temporary Injunction*, REIDSVILLE REV. (Reidsville, N.C.), May 9, 1923, at 1.



other taxpayers of said county and this action is brought for the purpose of restraining said Board of Commissioners from proceeding with the construction of said bridge and road . . . .<sup>133</sup>

The complaint successfully convinced Judge H.P. Lane of North Carolina's Eleventh District (and a native of Leaksville) to impose a temporary injunction to prevent the county board from entering into a contract to build the Fishing Creek Bridge.<sup>134</sup> However, Superior Court Judge Thomas J. Shaw later dissolved the injunction on appeal, concluding that as long as nothing illegal was being done, the county's elected officials could decide matters of public expenditures as they saw fit.<sup>135</sup> Since the schedule of the appellate courts made it unlikely that any further appeal would be heard before construction of the bridge was completed, opponents of the bridge opted instead to arouse political pressure and called for a series of "mass meetings" to organize and defeat the Mebane plan.<sup>136</sup> These mass meetings were each held at the county courthouse in Wentworth and were open to all citizens, who were encouraged to "let everyone come and show by your presence the interest you feel in your county and the expenditure of your money."<sup>137</sup>

The first mass meeting, which was one of three held in the summer of 1923, was a relatively quiet affair.<sup>138</sup> Although bridge opponents widely suspected that the three commissioners who supported the bridge project were acting under the influence of B. Frank Mebane,<sup>139</sup> they "stressed the point that they were not opposed to progress or good roads or schools but that the building of unnecessary roads, bridges and other public improvements was unwise at the present time on account of the high costs of material and scarcity of labor."<sup>140</sup> Some in the county who opposed the

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133. *Id.*

134. See Hayden, *supra* note 113.

135. *Decides in Favor of Commissioners*, REIDSVILLE REV. (Reidsville, N.C.), June 8, 1923, at 1; see *Judge Shaw Dissolves Bridge Injunction Suit*, TRI-CITY DAILY GAZETTE (Leaksville, N.C.), June 8, 1923, at 1; Hayden, *supra* note 113 ("Judge Thomas Shaw, ruling that the board of county commissioners is supreme unless it is shown there is fraud, dissolved this restraining order.").

136. *Mass Meetings Order of Day*, REIDSVILLE REV. (Reidsville, N.C.), June 11, 1923, at 1.

137. *Mass Meeting at Wentworth*, LEAKSVILLE NEWS (Leaksville, N.C.), Apr. 4, 1924, at 1.

138. *Stiff Opposition to Building of Bridge*, REIDSVILLE REV. (Reidsville, N.C.), June 18, 1923, at 1; Hayden, *supra* note 113.

139. See *Judge Grants a Temporary Injunction*, *supra* note 132.

140. *Ask a Check on Expenditures*, REIDSVILLE REV. (Reidsville, N.C.), May 9, 1923, at 1.

Fishing Creek Bridge saw a direct connection between its construction and a lack of expenditures in other areas, such as education.<sup>141</sup> Others argued that the bridge project was fiscally irresponsible in light of the county's already sizable debt (Rockingham County's Register of Deeds, Wade Gentry, would later testify that the county was \$2,309,693 in debt at the time of the injunction hearing, with \$394,511 overdrawn from the county's education fund).<sup>142</sup> Thus, the first meeting served to coalesce opposition against the plan, but the tone remained deliberative and did not spark immediate action.

The subsequent mass meetings were much higher-pitched in tone, and also produced more actionable results. The second mass meeting was planned to be held at the same time the county board was to meet (the board met in the same courthouse as the mass meeting, one floor above the angry crowd).<sup>143</sup> A formal "Citizens' Committee," presided over by R.S. Montgomery, presented the pro-bridge commissioners with a letter demanding cancellation of the bridge project.<sup>144</sup> Speakers claimed that ninety-five percent of the electorate in Rockingham County was opposed to the bridge,<sup>145</sup> noting that even the citizens of towns supposed to benefit most from the new bridge (Leaksville and Spray) preferred that it not be built,<sup>146</sup> and challenged proponents' claims that construction would bring industry and development to an area currently underdeveloped.<sup>147</sup>

The Citizens' Committee's letter went unanswered, and tempers elevated leading into the third mass meeting, which was also timed to

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141. *See Mass-Meeting Demands Immediate Resignation of Three Commissioners*, REIDSVILLE REV. (Reidsville, N.C.), June 20, 1923, at 1.

142. *Stiff Opposition to Building of Bridge*, REIDSVILLE REV. (Reidsville, N.C.), June 18, 1923, at 1.

143. *Mass-Meeting Demands Immediate Resignation of Three Commissioners*, *supra* note 141.

144. *Id.* The letter stated that spending the taxpayers' money on the bridge would "seriously jeopardize the present school program or any other school program that would increase the taxes in Rockingham [C]ounty, and we feel that the proper facilities for the education of the children are of far more serious import than the building of this bridge." *Id.*; *see also supra* note 115 (noting substantial increases in capital investments in county school system, mostly financed by debt).

145. *Mass-Meeting Demands Immediate Resignation of Three Commissioners*, *supra* note 143.

146. *See id.*

147. *Mass-Meetings Order of the Day*, REIDSVILLE REV. (Reidsville, N.C.), June 11, 1923, at 1.

coincide with a meeting of the county commissioners.<sup>148</sup> This meeting drew residents from across the county, with some reporters estimating that as many as 2,000 people packed into the 600-seat courthouse.<sup>149</sup> This time, the Citizens' Committee leadership called for the resignation of the three pro-bridge commissioners. Though records do suggest that a compromise was floated between the opponents and the pro-bridge commissioners,<sup>150</sup> many within the packed audience grew restless and unsatisfied, and overtones of violence began to emerge. Some suggested that a "committee" of fifty men visit the three pro-bridge commissioners and refuse to leave until the bridge issue was settled.<sup>151</sup> Reason prevailed, however, after the board communicated to the Citizens' Committee that they would postpone any action concerning the bridge indefinitely.<sup>152</sup> Though the board had not abandoned the project outright, the Citizens' Committee considered the delay progress and adjourned for the day.<sup>153</sup>

But it was at this third mass meeting that public opposition to the bridge project evolved into far more than angry taxpayers demanding reduced rates. A.D. Ivie's rhetoric—his "blood of our fathers" speech<sup>154</sup>—elevated the debate over Mebane's project, and the dispute was no longer simply about whether the county should build a new bridge; it was more fundamentally about the legitimacy of government, which citizens felt was usurped by a local tycoon.<sup>155</sup> Even though neither Ivie nor any of the proposed county initiatives mentioned Mebane explicitly, citizens knew that Mebane's private interests drove the commissioners' actions.<sup>156</sup> Ivie then concluded his oration by urging the mass meeting audience to "pledge each to the other, and to the people of Rockingham [C]ounty, our every power to

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148. See *Commissioners Are Asked to Call an Election: 2,000 Citizens Met at the County Seat Today*, REIDSVILLE REV. (Reidsville, N.C.), July 2, 1923, at 1 [hereinafter *Commissioners Are Asked to Call an Election*].

149. See *id.*; see also Hayden, *supra* note 113 (noting that 2,000 people were in attendance at the mass meeting).

150. Commissioners Pratt and McCollum evidently avoided the concurrent meetings due to illness, though one report also indicated that the commissioners asked for more time to reach a compromise agreement. *Commissioners at Home Sick*, REIDSVILLE REV. (Reidsville, N.C.), July 4, 1923, at 1; *Commissioners Ask for More Time to Decide*, TRI-CITY DAILY GAZETTE (Leaksville, N.C.), July 3, 1923, at 1.

151. See *Commissioners Are Asked to Call an Election*, *supra* note 148.

152. See Hayden, *supra* note 113.

153. See *Commissioners Ask for More Time to Decide*, *supra* note 150.

154. See *supra* note 119 and accompanying text.

155. See *Biggest Mass-Meeting*, *supra* note 117.

156. See Hayden, *supra* note 113.

the overthrow of this invisible special interest . . . and restore to the people their government.”<sup>157</sup>

News related to the bridge disappeared almost entirely from the pages of the county's newspapers for the rest of 1923. Anti-bridge commissioner R.B. Chance resigned from the board on October 23, 1923 and was replaced by George E. Barber, a Reidsville native and a fellow opponent of the Fishing Creek project.<sup>158</sup> The commission shuffle occurred without incident, in stark contrast to what would follow in 1924.

#### *E. A Contract, a Company, and a Divided County*

By January of 1924, many people in Rockingham County assumed that Mebane's bridge would not be built.<sup>159</sup> Then, on January 7, 1924, like a “bolt from the clear sky,”<sup>160</sup> the board of county commissioners voted three to two, with Commissioners Pratt, Pruitt, and McCollum voting in favor, and Commissioners Barber and Martin voting in opposition, to approve the construction of the Fishing Creek Bridge. A contract in the amount of \$39,675 was awarded to the Luten Bridge Company of Knoxville, Tennessee<sup>161</sup> to

furnish material for and to construct complete and ready for traffic, a reinforced concrete bridge over Dan River, near Fishing Creek, of three arches 105'0" each with 18'0" roadway

....

In consideration of the foregoing, the [county] hereby agrees to pay the [bridge company] the sum of Thirty Nine Thousand six hundred and seventy five \$39675.00 as follows, on monthly estimates made up by the County Engineer and to be paid at the regular meeting of the Commissioners at their meeting the first Monday in each month.<sup>162</sup>

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157. *Commissioners Ask for More Time to Decide*, *supra* note 150. Ivie continued, “We do further pledge our sacred honor and all other powers belonging to a free, independent and liberty-loving American citizenship.” *Id.*

158. Meeting Minutes from the Rockingham County Bd. of Comm'rs (Oct. 23, 1923) (on file with the North Carolina Law Review); Meeting Minutes from the Rockingham County Bd. of Comm'rs (Jan. 7, 1924) [hereinafter Jan. 7, 1924 County Comm'n Minutes] (on file with the North Carolina Law Review).

159. *See Awarding Contract for Building Bridge Came as Bolt from the Clear Sky*, REIDSVILLE REV. (Reidsville, N.C.), Jan. 9, 1924, at 1 (“[I]t was pretty generally believed that the board of commissioners had abandoned the idea of building the bridge.”).

160. *Id.* (“News that the county commissioners . . . gave the contract for the Fishing creek bridge created much surprise throughout the county.”).

161. Jan. 7, 1924 County Comm'n Minutes, *supra* note 158.

162. *Id.*

The contract was another in a long line of arrangements between Southern communities and the Luten Bridge Company. The company, based in Knoxville, Tennessee, built a significant number of bridges throughout the South in the first half of the twentieth century, many of which still stand today.<sup>163</sup> The company was one of several in the country with the name “Luten Bridge Company,” all named after Daniel B. Luten, a professor of engineering at Purdue University who created and patented an arch-based design for reinforced concrete bridges.<sup>164</sup> By 1920, between 12,000 and 30,000 bridges nationwide were built with Luten’s arch-based design.<sup>165</sup> To the Luten Bridge Company, this was yet another routine contract with a community.<sup>166</sup>

Many in the county, however, met the news with public outcry and immediately charged Pratt, Pruitt, and McCollum with being improperly swayed by Mebane’s deep pockets.<sup>167</sup> Political pressure swelled to a fever pitch as the parties entered February 1924, which would prove to be the pivotal month in which the composition of the board of commissioners, and the contours of the bridge debate, drastically changed.

On February 11, 1924, W. Franklin Pruitt sent a letter of resignation from the board of county commissioners to Hunter K. Penn, the Rockingham county clerk:

As my health has so failed me that I fear that I cannot attend the meetings of the Board of Co. Commissioners as I should and feeling that it would be to the best interest of my health I hereby tender my resignation as a member of said Board, my resignation effective at once. I have desired to do my duty as

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163. For pictures and information about these bridges, see generally DANIEL B. LUTEN, *REINFORCED CONCRETE BRIDGES OF LUTEN DESIGN* (1917). Many of the remaining Luten bridges built by the Knoxville company are reaching the end of their life cycle. For example, the future of the Worsham Street Bridge in Danville, Virginia (which is located only twenty-five miles from the Fishing Creek Bridge) was the subject of a recent political dispute that pitted historical preservationists against developers and city planners. Emyl Jenkins, *Worsham Street Bridge Update*, EVINCE MAGAZINE, July 2004, at 13.

164. See JAMES L. COOPER, *ARTISTRY AND INGENUITY IN ARTIFICIAL STONE: INDIANA’S CONCRETE BRIDGES, 1940–1942*, at 38 (1997). See generally LUTEN, *supra* note 163. Professor Luten himself had no proprietary stake in any of the firms that bore his name (though he received royalties from licensing his patented design) and worked instead for the rival National Bridge Company, which he founded in 1902. COOPER, *supra*, at 51–52.

165. COOPER, *supra* note 164, at 37; Ann B. Miller et al., *Final Report: A Survey of Masonry and Concrete Arch Bridges*, in VIRGINIA 20 (2000), [http://www.virginiadot.org/VTRC/main/online\\_reports/pdf/00-r11.pdf](http://www.virginiadot.org/VTRC/main/online_reports/pdf/00-r11.pdf).

166. See *infra* note 192.

167. See *Biggest Mass-Meeting*, *supra* note 117.

one of the Board, and do hope that a good man will be chosen as my successor.<sup>168</sup>

Pruitt, however, promptly reconsidered his resignation, and later that same afternoon he contacted the clerk's office requesting to rescind his resignation.<sup>169</sup> Pruitt then sent another letter the same day, addressed to the board and sent to Clerk Penn, saying that "after due consideration I request the Board not to take any action on the [resignation], and I still consider myself a member of said Board."<sup>170</sup> He later explained, in a remark that suggests Mebane's forceful hand, that "friends" had "urged upon [him] that it was his duty to remain faithful to the County interests to which he had been elected."<sup>171</sup>

Penn disregarded both Pruitt's call and letter and instead accepted Pruitt's resignation.<sup>172</sup> The next day, Penn wrote to W.W. Hampton, a Leaksville businessman, appointing him "as a County Commissioner for Rockingham County to fill the unexpired term of W.F. Pruitt, resigned."<sup>173</sup> Hampton was described by the *Reidsville Review* as "a dyed-in-the-wool democrat"<sup>174</sup> and "a booster at all times for this great county."<sup>175</sup> His loyalties to the county's Democrats ensured that Hampton would oppose construction of the bridge, thus changing the balance of power on the five-member board.<sup>176</sup>

For the following eleven months, both Pruitt and Hampton claimed to be on the county board of commissioners, leaving the

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168. Transcript of Record at 34, *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301 (4th Cir. 1929) (No. 2873). Pruitt later testified that he resigned "on account of local political dissensions in the County" and because "certain disorderly elements of the county sought, by intimidation, threats and mob action to intimidate the Commissioners and prevent the Commissioners from going ahead with the contract." *Id.* at 63.

169. *Id.* at 21.

170. *Id.*

171. *Id.*

172. See *Commissioner Pruitt Resigns; Will Hampton Sworn in This Morning*, REIDSVILLE REV. (Reidsville, N.C.), Feb. 13, 1924, at 1 [hereinafter *Pruitt Resigns*]; Meeting Minutes from the Rockingham County Bd. of Comm'rs (Feb. 21, 1924) [hereinafter Feb. 21, 1924 County Comm'n Minutes] (on file with the North Carolina Law Review).

173. Transcript of Record, *supra* note 168, at 35.

174. See *Pruitt Resigns*, *supra* note 172.

175. *Id.*

176. See *id.* In addition to holding strong Democratic roots, Hampton was a skilled baseball player. He starred at Oak Ridge Military Academy and proclaimed that "he was the first man in Rockingham County to throw a curved ball. This love of baseball followed him all his life and no game in the area was played without him in the grandstand." HERITAGE OF ROCKINGHAM COUNTY, *supra* note 63, at 298.

actual membership of that body in dispute.<sup>177</sup> But even as Pruitt continued to claim a place on the board, he, Chairman Pratt, and Commissioner McCollum stopped attending board meetings.<sup>178</sup> The three pro-bridge commissioners met only one more time, towards the end of 1924 as a shadow board of commissioners, without the other members, solely to discuss the lawsuit filed by the Luten Bridge Company against the county and commissioners. Pratt and McCollum explained their own continued absences from their rightful place at the board meetings with claims of poor health.<sup>179</sup>

Meanwhile, the anti-bridge commissioners—Martin, Barber, and Hampton—immediately asserted control over Rockingham County matters and started implementing a traditional Democratic agenda. In its first meeting, on February 21, 1924, the board agreed to cut spending projects throughout the county. It first resolved “that any new public road, or new construction on same decided on by Board . . . be stopped at once” and then ordered “to rescind any and all orders in regard to new public road, leading from Spray-Draper hard surface road to proposed site of Fishing Creek Bridge.”<sup>180</sup> Next on the chopping block was the bridge itself. The board proclaimed that the Fishing Creek Bridge was “not in the public interest, but on the contrary against the public interest.”<sup>181</sup> As such, they ordered the clerk to notify the Luten Bridge Company that the county “refuses to recognize the said paper writing as a valid contract and to advise said Bridge Company to proceed no further thereunder.”<sup>182</sup> At the time of this proclamation, the Luten Bridge Company had incurred only

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177. Editorial, *Tale of a Bridge* (Series No. 14), TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Mar. 3, 1924, at 1 (“This gives us six commissioners claiming membership on the Board while the law only calls for five. Lawyers may differ as to whether Pruitt or Hampton is the legal member, and on this the whole political fight for party control hinges.”).

178. See Meeting Minutes from the Rockingham County Bd. of Comm’rs (Feb. 26, 1924) [hereinafter Feb. 26, 1924 County Comm’n Minutes] (“Board met February 26th 1924 pursuant to adjournment . . . [w]ith the following members present: Jas. R. Martin, G.E. Barber, & W.W. Hampton.”) (on file with the North Carolina Law Review).

179. See *id.*; *Mass Meeting at Wentworth*, *supra* note 137.

180. Feb. 21, 1924 County Comm’n Minutes, *supra* note 172. In addition to cutting spending, the board also promptly addressed other items of public discontent, including reducing county debt and cutting taxes (and, in many cases, refunding taxes to certain individuals). See Feb. 26, 1924 County Comm’n Minutes, *supra* note 178; Meeting Minutes from the Rockingham County Bd. of Comm’rs (Mar. 3, 1924) [hereinafter Mar. 3, 1924 County Comm’n Minutes] (on file with the North Carolina Law Review).

181. Feb. 21, 1924 County Comm’n Minutes, *supra* note 172.

182. *Id.*

\$1,900 in costs.<sup>183</sup> These three commissioners continued to meet approximately every two weeks at the county courthouse in Wentworth to conduct the county's business, including the many mundane matters of county governance that had nothing to do with the bridge controversy. In total, the three men met as the board of county commissioners twenty-five times between February 12 and December 1, 1924.<sup>184</sup>

The two parallel boards, and the confusion over who spoke for the county, wreaked significant uncertainty over county policy. When the anti-bridge board met on March 3, 1924, the three commissioners noted that they had "been informed that a member of this Board was privately insisting on the Luten Bridge Company building the Fishing Creek Bridge in opposition to the action of this Board."<sup>185</sup> Notwithstanding this claim, the board reiterated its refusal to pay for the bridge,<sup>186</sup> resolving that the Luten Bridge Company should be notified that:

[A]ny and all work or expense incurred by it in regard to said bridge will be done by it at its own hazard and risk. The Board is of the opinion that the paper writing signed by T.R. Pratt purporting to be a contract with the Luten Bridge Company for the construction of this bridge is not a valid and legal contract as heretofore expressed by resolution of this Board, but if this Board should be mistaken about the legality of said paper writing, this Board does not desire to construct this bridge and will contest the payment for same if constructed.<sup>187</sup>

Nonetheless, the Luten Bridge Company continued to build. The *Tri-City Daily Gazette* reported, "It is thought that attorneys for the bridge company were looking into the legal status of the matter and found that the only safe thing to do, was to fulfill their contract

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183. See *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301, 303 (4th Cir. 1929) ("At the time of the passage of the first resolution, very little work toward the construction of the bridge had been done, it being estimated that the total cost of labor done and material on the ground was around \$1,900."). At that same meeting, the new board cancelled plans to build the hard-surface road connecting the Settle's Bridge to Madison. See Feb. 21, 1924 County Comm'n Minutes, *supra* note 172 ("[I]t was ordered that any new public road . . . that has been ordered to be worked . . . be stopped at once."). Recall that the road was political pork to shore up support for Mebane's bridge. See *supra* note 113 and accompanying text.

184. *Luten Bridge*, 35 F.2d at 303.

185. See Mar. 3, 1924 County Comm'n Minutes, *supra* note 180.

186. *Id.*

187. *Id.*



signed by themselves and the commissioners.”<sup>188</sup> Some believed that the reason the bridge company continued to build was that B. Frank Mebane promised to pay for the bridge if the company was unable to secure payment from the county.<sup>189</sup> Indeed, years after the incident, one newspaper reported that Mebane personally gave the Luten Bridge Company \$25,000 in Liberty Bonds to continue building the bridge.<sup>190</sup> Mebane, with all he had invested in the bridge to this point, remained determined not to let his bridge die.<sup>191</sup>

Whatever its reason, the Luten Bridge Company appeared steadfast in its plans to build the bridge. Even after Rockingham County indicated that it would not pay for the bridge, W.H. Long, vice president of the Luten Bridge Company, traveled to Rockingham County and defiantly proclaimed in an interview with the *Reidsville Review* that not only would the bridge be completed, but also that it would be “the finest bridge in [the] county.”<sup>192</sup> The company also issued a more direct response to the county’s rescission by sending a letter to the board of county commissioners, stating:

We are unable to agree with you that this contract is for any reason invalid or illegal, and we cannot consent to its rescision [sic] or cancellation or to any other conduct upon your part which will excuse you from the full and complete execution and compliance therewith upon the part of the Board of Commissioners of Rockingham County. We have already assembled a lot of material, organized our forces and performed a portion of the contract. It shall be our purpose to live up to and carry out the contract upon our part, and this is to advise you that we shall expect you to do the same upon your

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188. *A Tale of a Bridge* (Series No. 18), *supra* note 130.

189. M.E. Murray, Editorial, *A Tale of a Bridge* (Series No. 21), TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Mar. 14, 1924, at 1.

190. *Settlement in Fishing Creek Bridge Muddle: Luten Bridge Company Awarded Damage Against County for \$9,280—Ownership Questioned*, LEAKSVILLE NEWS (Leaksville, N.C.), Aug. 11, 1932, at 1; Carter, *supra* note 80, at 15.

191. Mebane’s determination to build the bridge resembled the same cavalier spirit that led to his earlier bankruptcy. His injudiciousness in pursuing the bridge project led many to name the bridge “Mebane’s Folly.” See Carter, *supra* note 80, at 1.

192. *Declares Fishing Creek Bridge Will Be One of the “Finest in This County,”* REIDSVILLE REV. (Reidsville, N.C.), Feb. 25, 1924, at 1. Evidently, the Luten Bridge Company encountered other municipalities that resisted paying for bridges the company built. See, e.g., *Luten Bridge Co. v. Mayor & Aldermen of Coal Creek*, Anderson Eq.: No. 2 (Tenn. Ct. App. Apr. 6, 1940) (holding that the Town of Coal Creek, Tennessee, entered into an enforceable obligation when its aldermen signed a promissory note to the Luten Bridge Company in exchange for the construction of a concrete bridgeway) (on file with the North Carolina Law Review).

part and that we will be paid by the county in accordance with the contract for the material and work done by us in the completion of the construction of the said bridge. We shall proceed at once and vigorously the construction of this bridge [sic] in fulfillment of our contract with full confidence that the county will fulfill its part and pay for the same.<sup>193</sup>

The Luten Bridge Company and the three opposing commissioners continued to play a slow-paced cat-and-mouse game throughout the summer. After each board of commissioners meeting, the board passed a resolution, and gave notice to the company, decreeing that the county refused to meet its end of the contract.<sup>194</sup> Meanwhile, county engineer J.S. Trogdon came to the courthouse each month with a new estimate of what the county owed the Luten Bridge Company, and every month the county rejected the bill on its face.<sup>195</sup> County Attorney P.W. Glidewell, who would later help Pratt, Pruitt, and McCollum with their response to the Luten Bridge Company's suit against the commissioners, resigned from his post,<sup>196</sup> and the county's residents grew increasingly divided about the issue, torn between supporting the commissioners' decisions or supporting the initial bridge plan.<sup>197</sup>

Each side of the bridge debate tried to lay the blame for the struggle on divisive figures. Those opposed to the bridge vilified B. Frank Mebane,<sup>198</sup> while the pro-bridge faction laid the blame on A.D. Ivie and J.M. Sharp, another lawyer active in the anti-bridge movement.<sup>199</sup> The county's newspapers also delved into the fray and

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193. Editorial, *A Tale of a Bridge* (Series No. 20), TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Mar. 12, 1924, at 1.

194. See Feb. 21, 1924 County Comm'n Minutes, *supra* note 172; Mar. 3, 1924 County Comm'n Minutes, *supra* note 180; Meeting Minutes from the Rockingham County Bd. of Comm'rs (Mar. 7, 1924) [hereinafter Mar. 7, 1924 County Comm'n Minutes] (on file with the North Carolina Law Review); Meeting Minutes from the Rockingham County Bd. of Comm'rs (Sept. 2, 1924) (on file with the North Carolina Law Review).

195. See, e.g., Meeting Minutes from the Rockingham County Bd. of Comm'rs (June 1, 1925) (rejecting bill from J. S. Trogden, finding that he had "not rendered any service for Rockingham County in regard to the attempted building of said bridge") (on file with the North Carolina Law Review).

196. Mar. 7, 1924 County Comm'n Minutes, *supra* note 194.

197. See, e.g., *Mass Meeting Now in Session at Wentworth*, REIDSVILLE REV. (Reidsville, N.C.), Apr. 7, 1924, at 1 (quoting county resident B.B. McKinney as having never "seen such division as was in evidence in this county just at this time").

198. See Advertisement, *Watch B. Frank Mebane*, REIDSVILLE REV. (Reidsville, N.C.), Oct. 31, 1924, at 2.

199. See *Tale of a Bridge* (Series No. 14), *supra* note 177. James Merritt Sharp, a tenacious trial lawyer, a North Carolina State Senator, and Rockingham's County Attorney, was father to Susie Marshall Sharp, North Carolina's Chief Justice and

fueled the divisive debate.<sup>200</sup> The *Tri-City Daily Gazette*, which was called by one of its competing newspapers “the organ that speaks for [Mebane],”<sup>201</sup> was ripe with constant negative references to the lawyers. The newspaper put aside all pretensions of objectivity when it embarked on a remarkable thirty-two-part front-page editorial generally called “A Tale of a Bridge.”<sup>202</sup> In one of those editorials, the newspaper wrote, “Some lawyers can get a man into more trouble in an hour, than he can get out of in ten years,” and displayed a front-page political cartoon portraying Ivie as a crony for special interests.<sup>203</sup> In another column, the *Gazette* described Ivie and Sharp’s opposition to the bridge as just a small part in a larger campaign to dominate the county:

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Associate Justice from 1962 to 1991. See Franklin Freeman, *Presentation of the Portrait of Susie Sharp Chief Justice Supreme Court of North Carolina 1974–1991*, June 11, 1996, North Carolina Court System, <http://www.nccourts.org/Courts/Appellate/Supreme/Portrait/Portrait.asp?Name=Sharp> (chronicling the Sharp family genealogy).

200. See *infra* A Note About Sources.

201. *Do Not Be Deceived*, LEAKSVILLE NEWS (Leaksville, N.C.), Oct. 31, 1924, at 1.

202. The column is variously called *A Tale of a Bridge*, *The Tale of a Bridge*, *Tale of a Bridge*. See *A Tale of a Bridge*, *supra* note 193; *The Tale of a Bridge*, *infra* note 338, *Tale of a Bridge*, *supra* note 199. The *Gazette*’s editor, M.E. Murray, explained that he was intent on using the column as a method of exposing the facts underlying the bridge controversy:

Today, there is turmoil in Rockingham County. More lies are told and retold in one day than has ever been put in one book. Men charge others with doing and saying the wrong thing. Threats are heard on county officials. Serious charges are lodged at the doors of the Board of Commissioners. On the other hand three Commissioners are suing certain individuals because of these charges. The fight is on and the county is all torn up over the lack of the facts and the truth.

M.E. Murray, Editorial, *A Tale of a Bridge*, TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Feb. 8, 1924, at 1. Though billed as an objective exposition of the facts concerning the bridge controversy, *A Tale of a Bridge* reads like the script of a three-month-long modern political commercial. Ad hominem attacks were also plentiful, including depictions of Ivie as a servant to special interests, *Political Triumvirate*, TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Apr. 5, 1924, at 3, and headlines such as “The Bridge Builders Union of Which Bobby Montgomery is president, Adolphus Ivie, spiritual adviser, Jimmy Union, legal injunctioneer, and Cracker Jack Wilson, Arctic Explorer, are going to have another ‘mask’ meeting at the Court House Monday.” Editorial, *The Tale of a Bridge* (Series No. 29), TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Apr. 4, 1924, at 1.

203. Ivie is shown as a cross between a Republican elephant and a Democratic donkey being pulled in various directions by special interests, including Marshall Fields in Chicago. *Political Triumvirate*, *supra* note 202. In another *Tale of a Bridge* column, the *Gazette* tried explicitly to pin responsibility for the dispute squarely on the two lawyers, labeling the two competing boards of commissioners as “Anti-Ivie-Sharp” and “Ivie-Sharp.” See *Tale of a Bridge* (Series No. 14), *supra* note 177.

The Ivie-Sharp faction wants to gain control of the Democrat party in Rockingham County and in this way they think, they will control the county, the Board of Commissioners, the County Board of Education, the County Offices, the Jail and Poor Farm, the Road Force and the Convict Camps, the County Playgrounds, Welfare Officers and all the vast army of men under the High Sheriff, some of whom are hired and paid by private interests, and when they thus gain control of everything, including our schools, the whole thing will become a political machine before whom every citizen must bow in blind subjection or be run out of the county.<sup>204</sup>

Meanwhile, as the *Gazette* ridiculed bridge opponents, it portrayed Mebane and the pro-bridge commissioners as saint-like figures. On March 6, 1924, the paper ran a poem glorifying the role of the bridge supporters called "Building at Eventide":

An old man going a lone highway,  
Came at evening, cold and gray,  
To a chasm vast, and deep, and wide.  
The Old man crossed in the twilight dim—  
The sullen stream had no fear for him—  
But he turned, when safe on the other side,  
And built a bridge to span the tide.  
"Old man," said a fellow pilgrim near,  
"You are wasting your time with building here.  
Your journey must end with the ending day;  
You never again will pass this way.  
You have crossed the chasm deep and wide,  
Why build this bridge at eventide?"  
The builder lifted his old gray head:  
"Good friend, in the path I have com," [sic] he said  
"There follows after me a throng  
Whose feet must pass this way.  
This stream, which has been but naught to me,  
To that hurrying throng may a pitfall be,  
They, too, the flowing stream should stem.  
Good Friend, I am building this bridge for them."<sup>205</sup>

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204. Editorial, *A Tale of a Bridge*, TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Mar. 4, 1924, at 1.

205. *Bridge to Span the Tide*, TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Mar. 6, 1924, at 1.

The *Reidsville Review* was also an active participant in the debate, strongly opposing Mebane's bridge and encouraging readers to attend the various mass meetings in the context of news stories covering past meetings.<sup>206</sup> The *Review* was so active in opposing the bridge project and denouncing its proponents that in February 1924, the *Review* (along with the Citizens' Committee) was sued for libel by Pratt, Pruitt, and McCollum.<sup>207</sup> The lawsuit claimed that the Citizens' Committee was "wantonly, maliciously, and recklessly" attacking the pro-bridge commissioners and that the *Review* was their soapbox.<sup>208</sup>

The anti-bridge faction also stepped up its campaign, including planning another mass meeting in April 1924 where rhetoric became particularly intense. At this mass meeting, which again coincided with a meeting of the board and at which a Luten Bridge Company representative was in attendance, Citizens' Committee Chairman Montgomery vigorously attacked the proposal, promised that the Citizens' Committee would not back down, and then invoked the image of the Ku Klux Klan,<sup>209</sup> which reputedly counted among its ranks members of the Citizens' Committee leadership.<sup>210</sup> He declared, "I don't know much about this organization, . . . but when we have to go after anything we are not going to mask but we will go if it is necessary."<sup>211</sup> The *Gazette* also noted an association between the Klan and the anti-bridge movement, referring to their mass meetings as "masked meetings."<sup>212</sup>

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206. See, e.g., *Looking for New Developments*, REIDSVILLE REV. (Reidsville, N.C.), June 29, 1923, at 1.

207. See *County Commissioners Sue the Review Co. and Individuals for \$75,000*, REIDSVILLE REV. (Reidsville, N.C.), Feb. 4, 1924, at 1.

208. Summons for Relief, Brooke, Parker & Smith, Graves, Brock & Graves, J.C. Brown, attorneys for plaintiff, *reprinted in* the REIDSVILLE REV. (Reidsville, N.C.), Feb. 4, 1924, at 4.

209. The Ku Klux Klan often participated in local politics in the South during the 1920s, making its presence known when it felt that the government was not representing what it perceived to be the public interest. "Klansmen took it for granted that they should be ever willing, when duty called, to throw their hoods into the ring. When necessity demands that [Klansmen] enter the political arena no motive other than that of service to others can actuate them." Arnold S. Rice, *The Southern Wing of the Ku Klux Klan in American Politics, 1915-1928*, at 65 (July 1959) (unpublished Ph.D. dissertation, Indiana University), *microformed on* Mic. 60-836 (Univ. Microfilms, Inc.) (internal quotations omitted). "The sole reason given by the Klan for its entering into local politics was a desire to 'clean up' the municipality or county." *Id.* at 71.

210. *Mass Meeting Now in Session at Wentworth*, REIDSVILLE REV. (Reidsville, N.C.), Apr. 7, 1924, at 1.

211. *Id.*

212. Editorial, *A Tale of a Bridge*, TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Apr. 4, 1924, at 1.

The battle over the bridge became even more contentious in late 1924 when the county commissioners were up for reelection. When Pratt, Pruitt, and McCollum all declined to seek reelection, Mebane (who, after all, was a Republican himself) pledged his support behind the 1924 Republican campaign and the Republican challengers for the county commission. As the November election approached, it clearly became a referendum on not only the bridge project but also on B. Frank Mebane himself. The lead editorial in the *Leaksville News* on October 31, 1924, entitled "Do Not Be Deceived," stated that B. Frank Mebane was "pulling the wires" on behalf of the Republican candidates for the board of county commissioners and encouraged readers to be wary of these candidates.<sup>213</sup> The *Reidsville Review*, which generally referred to Mebane as a "special interest" rather than referring to him by name, published a number of direct political advertisements in the lead-up to the election denouncing Mebane specifically, including one that read: "Don't scratch the Democratic county ticket. It might act as a soothing balm toward healing the twisted political spine of B. Frank Mebane."<sup>214</sup> Commissioners Barber, Martin, and Hampton—understanding that the election would quell any dispute about the board's membership—went to great pains to point out that they were pursuing a traditional Democratic agenda, curtailing spending in every way possible, including (but not limited to) their opposition to the bridge.<sup>215</sup> And the Republican candidates desperately tried to avoid being labeled as Mebane's cronies.<sup>216</sup> Some responded directly with advertisements of their own that warned, "Voters Do Not Be Deceived,"<sup>217</sup> or that readers should "Watch B. Frank Mebane."<sup>218</sup>

The election clearly reflected the county's anger. With a record voter turnout<sup>219</sup> and in a categorical rebuke of Mebane's plan, the previous anti-bridge commissioners, Barber, Martin, and Hampton, were all reelected; J.H. Benton and C.H. Dalton, two Democrats firmly opposed to the construction of the Fishing Creek Bridge, won

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213. *Do Not Be Deceived*, *supra* note 201.

214. *Watch B. Frank Mebane*, *supra* note 198.

215. Advertisement, *To the Voters of Rockingham County*, REIDSVILLE REV. (Reidsville, N.C.), Oct. 31, 1924, at 4.

216. Advertisement, *To the Voters of Rockingham County*, REIDSVILLE REV. (Reidsville, N.C.), Nov. 3, 1924, at 3.

217. *See Do Not Be Deceived*, *supra* note 201.

218. *See Watch B. Frank Mebane*, *supra* note 198.

219. *Rockingham Majority Is 2,000 Democratic; County Commissioners Vindicated*, LEAKSVILLE NEWS (Leaksville, N.C.), Nov. 4, 1924, at 1.

election;<sup>220</sup> and the Republican candidates were handily beaten.<sup>221</sup> The morning after election day, Rockingham citizens were greeted with the headline “In Rockingham County Republicans and Mebane are ‘Snowed Under’ ” splashed across the cover of the *Reidsville Review*.<sup>222</sup>

The newly elected board promptly put into action their anti-bridge campaign promises<sup>223</sup> and even resolved to prohibit either the Luten Bridge Company or J.S. Trogon from leaving a bill at the office of the county auditor.<sup>224</sup> With the board now firmly and indisputably in the hands of the Fishing Creek Bridge’s opponents, the stage was set for a legal battle with the Luten Bridge Company.

#### F. *The Suit*

On November 24, 1924, only a few weeks after Election Day, the Luten Bridge Company sued Rockingham County and its commissioners in the Western District of North Carolina for breach of contract and demanded payment for work on the bridge.<sup>225</sup> The bridge had not been completed when the lawsuit was filed, but substantial work had been done, and the company sued for \$18,301.07, which was the sum of the county engineer’s estimated monthly payments minus ten percent.<sup>226</sup>

The named defendants were Rockingham County and the individual commissioners who were on the board at the time the original contract had been signed: Pratt, Pruitt, McCollum, Barber, and Martin.<sup>227</sup> The complaint portrayed the dispute as a simple

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220. *The Winners: County Democratic Ticket*, REIDSVILLE REV. (Reidsville, N.C.), Nov. 5, 1924, at 1.

221. *In Rockingham County Republicans and Mebane are “Snowed Under,”* REIDSVILLE REV. (Reidsville, N.C.), Nov. 5, 1924, at 1.

222. *Id.*

223. See Mar. 19, 1923 County Comm’n Minutes, *supra* note 111 (canceling the construction of the bridge).

224. *Id.* at 32.

225. *Bridge Concern Sues Rockingham for \$18,301.07*, REIDSVILLE REV. (Reidsville, N.C.), Nov. 26, 1924, at 1. Professor Orth’s insightful comment suggests that legal strategy might explain why the Luten Bridge Company filed suit in federal district court whereas the Citizens’ Committee requested (and temporarily received) an injunction in state court. See John V. Orth, *A Bridge, A Tax Revolt, and the Struggle To Industrialize: A Comment*, 84 N.C. L. REV. 1927, 1930–31 (2006).

226. See Complaint at 5, *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301 (4th Cir. 1929) (No. 2873); see also Brief of Appellant at 3, *Luten Bridge*, 35 F.2d 301 (4th Cir. 1929) (No. 2873). Under the original contract, the county was allowed to withhold 10% of the purchase price until the completion of the contract. Brief of Appellant at 3, *Luten Bridge*, 35 F.2d 301 (4th Cir. 1929) (No. 2873).

227. Brief of Appellant, *supra* note 226, at 3.

breach of contract: it set forth that Rockingham County, acting through its board of county commissioners, entered into a contract with the Luten Bridge Company to build a bridge; an engineer was hired to oversee the work and present the county with a monthly bill; the county refused to pay the bill; and the action at hand was intended to recover these debts.<sup>228</sup> There was no mention of the turmoil that preceded the suit, and the complaint stated that Pratt, Pruitt, and McCollum, along with Martin and Barber, "are the duly elected, qualified and acting members of the Board of Commissioners of . . . Rockingham County."<sup>229</sup>

On November 27, the three pro-bridge commissioners—Pratt, Pruitt, and McCollum—met in Wentworth with the board's old lawyer<sup>230</sup> and filed an answer. Claiming to act in their official capacity as duly elected county commissioners, the three commissioners admitted that the county had entered into a contract with the company, that the company had performed its obligations, and that the county owed the amount claimed by the bridge company.<sup>231</sup> Without consulting the other commissioners named in the suit, Pratt, Pruitt, and McCollum "asked that the action be dismissed as to them as individuals, and that the defendant Rockingham County be required to pay such sum as was justly due and owing the plaintiff."<sup>232</sup>

Before a court could address the pro-bridge commissioners' answer, the newly elected board, speaking for Rockingham County, issued its own response to the suit. The board moved to dismiss the suit and quash the service of process, arguing that since the summons was addressed to Chairman Pratt and Commissioner Pruitt at the time when Martin was serving as the board's chair and Hampton had replaced Pruitt, the summons was improperly presented.<sup>233</sup> Similarly, the county also argued that Hampton should have been presented with a summons instead of Pruitt due to Pruitt's resignation earlier in the year.<sup>234</sup> Lastly, the county argued that the contract was made by

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228. *Id.*

229. Transcript of Record at 3, *Luten Bridge*, 35 F.2d 301 (4th Cir. 1929) (No. 2873).

230. Affidavit of W.F. Pruitt at 64, *Luten Bridge*, 35 F.2d 301 (4th Cir. 1929) (No. 2873). Though the record cannot confirm, the immediacy between the filing of the Luten Bridge Company's complaint and the filing of Pratt's, Pruitt's, and McCollum's answer suggests that there was a coordinated effort behind the two legal actions.

231. Brief of Appellant, *supra* note 226, at 3.

232. Brief of Appellee at 2, *Luten Bridge*, 35 F.2d 301 (4th Cir. 1929) (No. 2873).

233. Transcript of Record, *supra* note 229, at 10–11 (Special Appearance and Motion to Dismiss of Rockingham County).

234. *Id.* at 11.



undue influence and therefore was not valid.<sup>235</sup> It stated that “there was a preponderate opinion . . . that it was not in the public interest to build said bridge, but on the contrary that its construction would be making use of public funds for the private gain and good of one or a few citizens of the county.”<sup>236</sup>

The matters went before District Court Judge E.Y. Webb.<sup>237</sup> On June 2, 1927,<sup>238</sup> Judge Webb, without addressing the county’s argument that Pruitt’s resignation should be enforced, issued a terse two-page ruling that accepted that Pruitt had remained a member of the board of county commissioners through 1924.<sup>239</sup> Accordingly, Judge Webb ruled that the November 1924 meeting of Pratt, Pruitt, and McCollum constituted a quorum of the board of county commissioners, and he refused to admit into evidence testimony contending that the anti-bridge commissioners were, in fact, the county’s official body.<sup>240</sup> He then concluded:

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235. When referring to the lower court case in their Fourth Circuit brief, the county stated that “[f]or reasons not pertinent upon this record the County in its answer denied that any legal and binding contract was ever made.” Brief of Appellant, *supra* note 226, at 2.

236. Transcript of Record, *supra* note 229, at 19 (Answer of Rockingham County).

237. Judge Edwin Yates Webb was a successful politician and judge in his own right. He was a nine-term United States Congressman from North Carolina, serving from 1903 to 1919 and chairing the House Judiciary Committee, where he was a leading proponent of Prohibition. He was appointed to the Western District of North Carolina in 1919 by Woodrow Wilson, where he served until 1948. Webb, Edwin Yates, Biographical Directory of the United States Congress, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=W000231> (last visited July 31, 2006).

238. The long delay between the filing of the suit and the parties’ appearance before Judge Webb, and the brevity of Judge Webb’s ruling, is likely explained by the severe docket congestion that afflicted the Western District of North Carolina at that time. The Western District was quite large and was overwhelming the two judges who served it, but congestion reached new heights when the judge accompanying Judge Webb, Judge James E. Boyd, grew aged and infirm but refused to resign (Judge Boyd turned eighty in 1925 but remained on the bench for ten additional years). The district was sufficiently congested to attract Congress’s attention, where it was revealed that its caseload was over 60% more than the national average. See *Hearing on H.R. 5745 Before the Subcomm. No. 4 of the H. Comm. on the Judiciary*, 69th Cong. 1–8 (1926).

It is quite possible that the packed docket in Judge’s Webb’s courtroom forced Judge Webb to proceed through some cases hastily, leading to some judicial errors. Judge Parker expressed disappointment to his colleagues hearing the *Luten Bridge* case, remarking that Webb “virtually directed a verdict for the plaintiff.” See Memorandum by John J. Parker on Case No. 2873 [*Luten Bridge*], in JOHN J. PARKER PAPERS, *supra* note 3, at Box 60, Folder 1234.

239. Transcript of Record, *supra* note 229, at 14–16 (Findings of Fact, Conclusions of Law and Judgment Upon the Foregoing Motion).

240. *Id.*

The Court is of opinion that the defendants, T.R. Pratt, Chairman, W.F. Pruitt and J.F. McCollum, were the duly and regularly constituted Commissioners for the County of Rockingham, and possessed the necessary power and authority to speak and act for the County in this litigation, and that their answer herein filed is a valid and lawful act for and on behalf of said County, and constitutes the regular and legal answer to the complaint herein filed.<sup>241</sup>

The ruling undermined the core of the county's case, severely handcuffing any chance of challenging the validity of either the contract or the authority of the anti-bridge board's repudiations. And it proved to be determinative. A brief one-day jury trial, held on January 22, 1929, resulted in a verdict that the county was liable to the Luten Bridge Company for breach of contract in the amount of \$18,301.07.<sup>242</sup>

Rockingham County appealed the verdict to the Fourth Circuit on April 17, 1929. It appealed on sixteen separate grounds, most of which challenged the lower court's decision to treat Pratt, Pruitt, and McCollum's answer as that of the county. The first category of arguments advanced by the county was that Pruitt had lawfully resigned and ceased being a member of the board of county commissioners at the moment he submitted his resignation. As such, the answer he filed with Pratt and McCollum could not be the answer of the county. Second, the county argued that after Hampton's appointment, the lawfully constituted board of county commissioners included Hampton *de jure*, and thus could not include Pruitt. Alternatively, if Hampton was not a member *de jure*, then he acted as a *de facto* member of the board of county commissioners and thus acquired official status.<sup>243</sup> Finally, the county argued that even assuming *arguendo* that Pruitt was still a member of the board when the answer was filed, the three commissioners meeting outside of a formal board meeting could not act in their official capacity,<sup>244</sup> and thus the answer the three filed could not speak for the county.<sup>245</sup> The county requested that the appeals court reverse the lower court's judgment and remand for a new trial, in which the county could admit

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241. *Id.* at 84.

242. *Id.* at 30–31 (Final Judgment).

243. Brief of Appellant, *supra* note 226, at 6–7.

244. *Id.* at 11–12.

245. *Id.* at 9–10.

into evidence its version of events and discredit the answer offered by Pratt, Pruitt, and McCollum.

In response, the Luten Bridge Company, the appellee, countered that Pruitt's resignation was rescinded and thus was not properly accepted,<sup>246</sup> and that the three pro-bridge commissioners were entitled to act on behalf of the county at the meeting in November 1924.<sup>247</sup> But the crux of the bridge company's argument remained simple: the duly elected board of county commissioners of Rockingham County had entered into a contract with the company, and since the latter performed their end of the contract, the former must perform as set forth in the contract. The appellees' brief stated succinctly, "the bridge has been built and completed in accordance with the contract, and now spans the stream in Rockingham County, and for which not one cent has been paid by the County."<sup>248</sup>

Thus, ironically, none of the issues on appeal focused on any material question of contract law. The county, in contrast to its position in the district court, did not dispute the validity of the contract and instead challenged the validity of the pro-bridge commissioners' answer and requested a remand. The bridge company's arguments primarily challenged the validity of Pruitt's resignation and defended the authority claimed by the three pro-bridge commissioners. And, most interesting of all, neither party proffered an argument challenging the lower court's calculation of damages.<sup>249</sup>

The case was assigned to a three-judge panel of the United States Court of Appeals for the Fourth Circuit.<sup>250</sup> The panel included Judges John J. Parker of North Carolina, George McClintic<sup>251</sup> of West Virginia, and Morris Soper<sup>252</sup> from Baltimore.<sup>253</sup> Judge Parker chaired the panel and would ultimately write the decision that would make *Rockingham County v. Luten Bridge Co.* famous.

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246. Brief of Appellee, *supra* note 232, at 10.

247. *Id.* at 19.

248. *Id.* at 6.

249. *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301, 302 (4th Cir. 1929).

250. *Id.*

251. Born January 14, 1866, died September 25, 1942. See Judges of the United States Courts, Federal Judicial Center, <http://air.fjc.gov/public/home.nsf/hisj> (last visited July 31, 2006).

252. Born January 23, 1873, died March 11, 1963. See *id.* Both Judges McClintic and Soper were district court judges sitting by designation. See *Luten Bridge*, 35 F.2d at 302.

253. *Id.* at 301.

*G. The Opinion, Revisited*

With the details of the underlying dispute as background, the reader is now positioned to understand Parker's complete opinion, including the bulk that is neglected by the casebooks. Judge Parker began by observing that there were three issues on appeal. The first was "[w]hether the answer filed by Pratt, Pruitt, and McCollum was the answer for the county."<sup>254</sup> Thus, the court would have to decide whether Pruitt was still a member of the board of county commissioners when he signed the answer, and even if Pruitt were a member of the board, the court would have to determine whether the three men could act as the county's governing body in an informal meeting. The second issue was "[w]hether, in light of the evidence offered and excluded, the resolutions . . . and the notices [of the county to repudiate the contract], [were] to be deemed action on the part of the county."<sup>255</sup> The question for the court was whether a county board of commissioners that included Hampton could have the authority to conduct the county's business between the time that Pruitt delivered his resignation and the following November when new elections were held. The final issue was "whether [the Luten Bridge Company], if the notices [were] to be deemed action by the county, [could] recover under the contract for work done after they were received, or [whether it was] limited to the recovery of damages for breach of contract as of that date."<sup>256</sup>

In an opinion that received virtually no negative comments from the other members of the Fourth Circuit panel,<sup>257</sup> Judge Parker concluded that Rockingham County had indeed terminated the bridge contract. He first ruled that the lower court had erred in treating the answer by Pratt, Pruitt, and McCollum as the answer of the county.<sup>258</sup> Even if all three (including Pruitt) were still members of the board of county commissioners, they could not act on the county's behalf unless their November 1924 meeting was properly held in "legal session."<sup>259</sup> In noting that "[t]he rule is well settled that the governing board of a county can act only as a body and when in

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254. *Id.* at 304.

255. *Id.*

256. *Id.*

257. See Letter from George W. McClintic to John J. Parker (Sept. 6, 1929), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 23, Folder 422 (indicating Judge McClintic's concurrence with Judge Parker's draft opinion); Letter from Morris A. Soper to John J. Parker (Sept. 17, 1929), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 23, Folder 423 (indicating Judge Soper's concurrence with Judge Parker's draft opinion).

258. *Luten Bridge*, 35 F.2d at 304.

259. *Id.*

legal session as such,” Parker ruled that “Commissioners casually meeting have no power to act for the county” and thus “[i]t is unthinkable that the county should be held bound by such action.”<sup>260</sup>

Next, Parker ruled that Hampton had the authority to act officially as a Rockingham County Commissioner.<sup>261</sup> This conclusion rested on two independent grounds. First, Pruitt’s resignation was properly accepted by the county clerk before it was rescinded, and the clerk thereafter swore in Hampton as the new commissioner. Each step of this resignation and reappointment process was proper, and though “[t]he mere filing of the resignation ... did not itself vacate the office of Pruitt, ... after its acceptance, he had no power to withdraw it.”<sup>262</sup> In the alternative, even if Hampton’s appointment was not valid, Parker ruled that Hampton enjoyed authority as a de facto officer.<sup>263</sup> Under either argument, the board of county commissioners as constituted by Hampton, Barber, and Martin could, in Parker’s view, speak for the county. As such, their declarations that the county no longer wanted the bridge and their instructions to the Luten Bridge Company to halt construction constituted official county actions.<sup>264</sup>

Parker relied on North Carolina state court precedents to reach these conclusions, but most of the cited authorities were not directly on point. In determining that the November 1924 meeting of Pratt, Pruitt, and McCollum was not a “legal session,” Judge Parker cited *O’Neal v. Wake County Board of Education*,<sup>265</sup> a 1928 case from the Supreme Court of North Carolina that gave little guidance as to what constituted a “legal session” in which commissioners could act in their official capacity.<sup>266</sup> Parker’s conclusion that a county clerk had the authority to accept a commissioner’s resignation and then appoint a new commissioner (even as the resigning commissioner, duly elected by the county, demanded his position returned) stood on even shakier legal ground. Parker cited *Hoke v. Henderson*, an 1833 North Carolina Supreme Court case that involved an effort to remove a

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260. *Id.* at 304–05.

261. *Id.* at 305–06.

262. *Id.* at 306.

263. *Id.* at 307.

264. *Id.*

265. 196 N.C. 184, 145 S.E. 28 (1928).

266. *Id.* at 187, 145 S.E. at 29 (holding that county decisions are binding when the county commissioners act in meetings that are “in legal session, regular, adjourned, or special [and] based upon deliberate conference and intelligent discussion of proposed measures”).

state legislator from office.<sup>267</sup> Acknowledging that “North Carolina statutes make no provision for resignations by members of the boards of county commissioners,”<sup>268</sup> Parker rested on a passing reference in *Hoke* that a resignation of a public officer was official only after a proper authority accepted that resignation.<sup>269</sup> Though this appears to be little more than a requirement imposed on the resigning officer, Parker turned this proposition around to conclude that the “proper authority” (which he concluded is the county clerk) has the power to enforce a rescinded resignation and fill the vacancy.<sup>270</sup> And in concluding that Hampton enjoyed de facto legislative authority, Parker cited to several cases that dismissed doubts, generally technical and trivial in nature, to the authority of an individual who has been acting—and has been widely accepted—as a government official.<sup>271</sup> Parker dismissed the applicability of *Baker v. Hobgood*,<sup>272</sup> in which there were rival county commissioner boards discharging duties, because “upon the appointment of Hampton, Pruitt attended no further meetings and left him in the unchallenged possession of the office.”<sup>273</sup> Of course, that disregards both the pressures and threats placed on Pruitt and the general political upheaval that consumed Rockingham County during 1924.<sup>274</sup>

By no means was Parker’s tapestry of case citations a perversion of prior case law. To the contrary, Parker did a skillful job finding precedential support for his conclusions, but the imprecision of the cited precedents illustrates that the case law was sufficiently vague that the outcome was not preordained. The main lesson, and one that

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267. 15 N.C. (4 Dev.) 1 (1833).

268. *Luten Bridge*, 35 F.2d at 306.

269. *See id.* (“A public officer, however, has at common law the right to resign his office, provided his resignation is accepted by the proper authority.” (citing *Hoke v. Henderson*, 15 N.C. (4 Dev.) 1 (1833))); *see also Hoke*, 15 N.C. (4 Dev.) at 15 (“An officer may certainly resign; but without acceptance, his resignation is nothing and he remains in office. It is not true, that an office is held at the will of either party. It is held at the will of both.”); *Taylor v. Vann*, 127 N.C. 165, 167, 37 S.E. 263, 264 (1900) (describing the holding in *Hoke*).

270. *Luten Bridge*, 35 F.2d at 306.

271. *Id.* at 307 (citing, e.g., *Norfleet v. Staton*, 73 N.C. 454, 457–59 (1875) (holding that a clerk enjoyed de facto authority even though the appointment came from a de facto judge); *Markham v. Simpson*, 146 N.C. 135, 149–50, 95 S.E. 106, 107 (1918) (holding that a mayor selected under controversy by the municipality’s board of aldermen is a de facto officer with authority stemming from his appointment by a de jure board)).

272. 126 N.C. 149, 35 S.E. 253 (1900) (ruling, in a dispute between competing de facto public school boards in which both appointed a county superintendent, that the appointment from the “legal” de facto board was paramount to the appointment from the non-legal de facto school board).

273. *Luten Bridge*, 35 F.2d at 307.

274. *See supra* Part II.D–E.

many professors who teach *Luten Bridge* emphasize, is that the lack of clear legal rules to guide a county through political turmoil, and the uncertainty that such turmoil imposes on parties trying to operate under or execute transactions with the county, was the essence of the Luten Bridge Company's legal problem.<sup>275</sup> Though the company's struggles to operate within political and contractual uncertainty might make its decision to build the roadless bridge a defensible one, they were also motivation for Parker to rectify the underlying problem, even if that meant creating clear legal rules that enjoyed only indirect support from prior case law.

Then, finally, in the final two pages of the nine-page opinion, Parker famously ruled that the Luten Bridge Company had a duty to mitigate the damages from the county's breach.<sup>276</sup> The case was then remanded to the lower court with instructions that the court award the Luten Bridge Company its expenses up through the time of the county's repudiation, plus its expected profits.<sup>277</sup>

The perception in Rockingham County was that Parker's decision would be important, but there were conflicting views as to what its legacy would be. The *Leaksville News*, for example, identified the central issue to be one of local government contracting: "The case will probably make clear whether one board of county commissioners can arbitrarily repudiate the contract of another and 'get by' to the loss of the outside party," or similarly make disingenuous promises it knows future commissioners will refuse to keep.<sup>278</sup> Alternatively, the *Reidsville Review* highlighted the portion of the holding that dealt with the duty to mitigate damages.<sup>279</sup> The paper noted that

the substance of the decision is that when notice of intent to annul a contract is given, the damages that may be assessed against a person or unit giving such notice, can include only the amount actually spent, the actual losses at the time of the

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275. See *supra* notes 187–88 and accompanying text (describing the company's efforts to determine its legal obligations after receiving mixed messages from parallel boards of county commissioners).

276. See *supra* notes 22–23 and accompanying text. And though the calculation of damages also confronted competing precedents, Parker's decision to reject the English rule in *Frost v. Knight* and follow the line of American cases was (had the parties considered it) a predictable outcome. See *supra* notes 25–30 and accompanying text.

277. *Luten Bridge*, 35 F.2d at 309.

278. *Fishing Creek Bridge to Get the Spotlight*, LEAKSVILLE NEWS (Leaksville, N.C.), Jan. 4, 1929, at 1.

279. M.R. Dunnagan, *Rockingham's Case Is Just About Won*, REIDSVILLE REV. (Reidsville, N.C.), Dec. 9, 1929, at 1.

notice, plus profits actually expected and do not include expenditures in continuing the work after such notice is given.<sup>280</sup>

Interestingly, the *Leaksville News* reported that the verdict was an almost complete victory for Rockingham County because the county had “readily offered to settle” for expectation damages at the time of breach,<sup>281</sup> though no available evidence from 1924 supports the claim.

### III. THE INTENDED SIGNIFICANCE: INDUSTRIALIZING NORTH CAROLINA’S HINTERLAND

The rich story surrounding this famous case answers the riddle posed at the beginning of this Article. Even though *Rockingham County v. Luten Bridge Co.* is a staple in contracts casebooks, it is now clear why Judge Parker, in his letter to his UNC mentor in 1929, characterized his later-famous opinion as one “involving an important question of county government in North Carolina.”<sup>282</sup> The case focused on whether certain county commissioners at a certain moment in time had the authority to bind the county in an agreement. Indeed, the calculation of damages was neither litigated in the court below nor debated in the parties’ briefs and was instead merely ancillary to the issues central to the dispute.<sup>283</sup>

Thus, the previous section answers why Judge Parker said his opinion involved a question of county government law. This section answers why Judge Parker thought those legal issues were important.

#### A. *Industrial Growth in North Carolina*

On the surface, the debate over whether Rockingham County should build the bridge was a multilayered debate between angry taxpayers and a prodigal administration, between citizen-activists and corrupt politicians, and between advocates of fiscal restraint and proponents of public investments. Underlying these disputes, however, were deeper signs of a state struggling with an economic metamorphosis. A land that was once a traditional agricultural center was now developing into a national industrial power, precariously trying to find the right balance of government spending and private

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280. *Id.*

281. *County Wins Fishing Creek Bridge Case*, LEAKSVILLE NEWS (Leaksville, N.C.), Oct. 18, 1929, at 1.

282. Letter from John Parker to Horace Williams, *supra* note 8.

283. See Brief for Appellant, *supra* note 226, at 9 (noting that the lower court preempted any question of damages when it instructed the jury, “[i]f you believe this testimony, and you do because only one witness testified about the amount due, you will answer this issue \$18,301.07. If you have no objection, I will answer the issue for you”).



development. The transition was not smooth, but it was fairly rapid. North Carolina was home to only forty-nine textile mills in 1880 but boasted 311 in 1919, and the number of people working at those mills rose from 3,232 to 67,297 over the same period.<sup>284</sup>

North Carolina's dramatic growth emerged out of the economic despair of Civil War Reconstruction.<sup>285</sup> During the 1880s, shortly after the failure of the Reconstruction efforts to rebuild the South, ambitious leaders—eager to stimulate the economy and their own careers—proposed a widespread campaign touting the need for industry.<sup>286</sup> Indeed, “chambers of commerce, daily and weekly newspapers, and itinerant industrial evangelists” flocked throughout North Carolina to advocate the development of textile mills.<sup>287</sup> As one historian noted, “the people of the state were convinced that their economic salvation lay in converting their raw cotton into cloth.”<sup>288</sup> They were further aided by North Carolina's comparative advantages in human and natural resources. The state enjoyed lower labor costs and fewer unions than New England, where textile mills were primarily located at the time.<sup>289</sup> The cost of the power needed to drive textile mills was also lower in North Carolina due to the state's substantial hydroelectric resources.<sup>290</sup> These resources were exploited heavily for use in manufacturing, particularly for textile mills, and drove the eye of the textile industry from New England to North

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284. PHILLIP J. WOOD, *SOUTHERN CAPITALISM: THE POLITICAL ECONOMY OF NORTH CAROLINA, 1880–1980*, at 49, tbl.2.6 (1986).

285. See ESCOTT, *supra* note 120, at 196 (remarking that “[i]n the closing decades of the nineteenth century, the industrial transformation of North Carolina began in earnest”).

286. *Id.* at 171 (Democrats in the state “supported visions of a New South of progress, improvement, and prosperity.” Not to be outmatched, “Republicans refused to fade away as a viable party, and those whom progress harmed prepared to fight back.”).

287. WOOD, *supra* note 284, at 35.

288. WILLIAM S. POWELL, *NORTH CAROLINA: A HISTORY* 166 (1977).

289. See WOOD, *supra* note 284, at 59–64 (“During the 1920s and 1930s the difference between rates of exploitation in the Carolina Piedmont and in New England was the crucial factor in the relocation of the cotton textile industry to the South. . . . According to [one Southern industry booster], New England cotton manufacturers could not possibly overcome the major southern advantage—a large and at that point mostly untapped supply of poor white workers, who were ‘docile, not given to strikes, and, as a class, [were] anxious to find work and willing to accept much lower wages than northern operatives.’”).

290. *Id.* at 50.

Carolina.<sup>291</sup> By 1920, North Carolina boasted the world's largest mills for manufacturing hosiery, towels, denim, damask, and underwear.<sup>292</sup>

Industrialization also led to greater creation of wealth for the industrialists, including a substantial trickling down to workers. In 1920, for example, the state's small manufacturing work force was creating goods valued at twice the combined production of the state's agricultural sectors.<sup>293</sup> These differences in economic productivity led to discrepant salaries: while a cotton picker would make \$6 weekly, a spinning-room warper<sup>294</sup> could expect to make \$7.50.<sup>295</sup> Additionally, manufacturing industries tended to create supervisory roles, with a weaving room section boss expected to make \$9 a week and a spinning overseer expected to make \$15 a week.<sup>296</sup>

But even as industrial employment grew, still a relatively small percentage of North Carolinians worked at mills, with the rest retaining jobs in other industries. In 1919, less than 20% of the state's citizens still lived in incorporated towns and only 6.2% of North Carolina's residents worked in manufacturing-related jobs.<sup>297</sup> Most of the remainder lived in rural areas and worked as farm hands engaged in agriculture.<sup>298</sup> Consequently, industrialism had only limited reach, with agriculture remaining the dominant political force in North Carolina,<sup>299</sup> and the state witnessed a growing discrepancy in wealth that was enjoyed by a relatively small minority.<sup>300</sup> This created a landscape ripe for societal and political conflict, pitting enshrined and

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291. One reflection of the growing economic importance of natural resources was the decision by the powerful Duke family to switch the emphasis of their company from tobacco production to the provision of hydroelectric power for textile mills. *Id.* at 36.

292. Thomas H. Clayton, *Close to the Land: North Carolina, 1820–1870*, in *THE WAY WE LIVED IN NORTH CAROLINA*, *supra* note 51, at 496. However, it is important to note that “much of this productivity was a response to inflated wartime demands, and the decade of the 1920s brought a gradual decline in the per capita consumption of textiles.” *Id.*

293. HUGH TALMAGE LEFLER & ALBERT RAY NEWSOME, *NORTH CAROLINA: THE HISTORY OF A SOUTHERN STATE* 580 (3d ed. 1973).

294. A “warper” was one who arranged strands of yarn or thread so that they ran lengthwise in weaving. See *OXFORD ENGLISH DICTIONARY* (2d ed. 1989) (defining warper as “[o]ne who winds yarn in preparation for weaving, one who lays the warp for the weaver”).

295. HOLLAND THOMPSON, *FROM THE COTTON FIELD TO THE COTTON MILL: A STUDY OF THE INDUSTRIAL TRANSITION IN NORTH CAROLINA* 279 (1906).

296. *Id.* at 279–80.

297. See WOOD, *supra* note 284, at 52.

298. THOMPSON, *supra* note 295, at 2.

299. WOOD, *supra* note 284, at 52.

300. See Clayton, *supra* note 292, at 496 (contrasting the immense textile manufacturing enterprise owned by Spencer Love with the tightly packed houses rented by the mill workers).

traditional majoritarian forces against increasingly wealthy individual entrepreneurs. As one historian described it, “textiles fostered the concept of the mill village . . . . [l]ike the feudal manor and antebellum plantation [which both] fostered a suffocating paternalism.”<sup>301</sup>

These tensions were not new, and North Carolina’s political parties were forced to navigate between the conflicting interests of agriculture and industry long before the Rockingham Board of County Commissioners elections in 1924. Indeed, these divisions were at the heart of state politics as far back as the post-Civil War days.<sup>302</sup> Generally, the Democratic Party stood for traditional agrarian interests, and because of the large percentage of agricultural workers in the state,<sup>303</sup> the party maintained a stronghold over state government.<sup>304</sup>

But opposition to the Democratic leadership was steady and constant.<sup>305</sup> One of the early prominent political leaders who battled successfully against Democrats was John Motley Morehead, a Whig Governor of North Carolina from 1841 to 1845.<sup>306</sup> With Morehead as governor, North Carolina made significant investments in its schools, railroads, and waterways, generally against intractable Democratic opposition.<sup>307</sup> The Republican Party inherited the Whig policy priorities and emphasized the creation of civic improvements, including developing an infrastructure that would stimulate economic growth and increase the state’s tax base.<sup>308</sup>

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301. *Id.*

302. *See, e.g.,* ESCOTT, *supra* note 120, at 208 (describing the tension as a clash between the “privileged aristocratic class” and “the workers”). Escott concludes, “[l]ife for these two classes ran along on separate and widely separated levels.” *Id.*

303. *See* WOOD, *supra* note 284, at 55 (“Democratic majorities were smallest in such areas as Alamance, . . . where the textile industry was most thoroughly established, where workers’ ties to the land were most distant, and where the possibility of intimidation based on isolation was smallest.”). The political parties were also sharply split over race relations, with the Democratic Party exhibiting far more hostility towards African Americans than Republicans. *See* POWELL, *supra* note 288, at 154–61.

304. POWELL, *supra* note 288, at 96–98 (describing how the Democrats dominated state politics excepted for a brief Populist period in the 1890s).

305. *Id.* at 106.

306. Coincidentally, Governor Morehead was the grandfather of Lily C. Morehead, B. Frank Mebane’s wife. *See* Herring, *supra* note 53, at 118.

307. *See generally* BURTON ALVA KONKLE, JOHN MOTLEY MOREHEAD AND THE DEVELOPMENT OF NORTH CAROLINA 199 (1922).

308. *See* WOOD, *supra* note 284, at 107. *See generally* DANIEL WALKER HOWE, THE POLITICAL CULTURE OF THE AMERICAN WHIGS 281–303 (1984).

Even after the Democrats returned to power in the 1870s and made efforts to slow the rate of public investment,<sup>309</sup> industrial development continued, and the Democrats were accused of pandering to industry and “rul[ing] North Carolina in the interest of capital.”<sup>310</sup> The declining agricultural market further fueled farmers’ anger, and many farmer organizations led an effort to move the Democratic Party away from the factories and back towards the fields.<sup>311</sup> For example, in the election of 1888, several statewide Democratic campaign materials sought support from farmers by portraying mill workers as being aligned with the Republican Party and “warn[ed] of the dangers of the domination of the state by Negroes, northerners and ‘foreign ideas.’”<sup>312</sup> The strategy paid off for the farmers, as Democrats defeated mill workers’ candidates across the state, but in doing so the party also alienated many textile workers and other pro-industry forces.<sup>313</sup>

Twelve years later, the Democrats rode to a landslide victory in elections across the state and would remain in power for decades, prompting one commentator to remark that “the completeness of Democratic supremacy after 1900 was amazing.”<sup>314</sup> Between 1900 and 1920, there were no Republican governors and only “5 or 6” Republicans concurrently serving in the 120-seat State House of Representatives,<sup>315</sup> leaving “the Republican party, to which one-third or more of the state’s voters belonged[,] . . . almost completely without representation, influence, or power in the state government.”<sup>316</sup> Under near-complete Democratic control,<sup>317</sup> the state government pursued policies that kept both public expenditures and tax rates as low as possible.<sup>318</sup>

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309. See WOOD, *supra* note 284, at 109.

310. *Id.* at 110; see also POWELL, *supra* note 288, at 172 (remarking that much of North Carolina’s industrial development occurred under Democratic control).

311. See WOOD, *supra* note 284, at 111 (describing the rise of the farmers’ alliance movement and its transformation into the Populist Party).

312. *Id.* at 54–55.

313. *Id.* at 55.

314. See LEFLER & NEWSOME, *supra* note 293, at 563.

315. *Id.*

316. *Id.*

317. In place of Republican opposition, a split developed in the Democratic Party between its conservative and liberal wings, with the former favoring business interests and the latter tending to support farmers. *Id.* at 564.

318. See WOOD, *supra* note 284, at 123.

B. *"The Children Do Not Play Baseball Together"*

Though most of North Carolina's elected officials belonged largely to one party, its citizens led much more divided lives. Many of the men and women who worked and lived in mill towns like Mebane's Spray had been "indebted yeomen or tenant farmers" whose newfound position in industry acted as a sign of "failure and inferiority" to their more successful agricultural brethren.<sup>319</sup> As a result, communities made up of mill workers became largely alienated from their farm-based neighbors.<sup>320</sup> One 1924 study noted that, in relation to the agricultural population:

[The] mill population is in a world apart. It does not play with the community. It does not mix with it. It does not intermarry[;] it does not work with it. The children do not play baseball together, and in one instance an attempt to establish a common camp had to be given up on account of opposition to having the other children associate with the mill children. This is so general a fact in the mill section of the South that it is recognized as a caste system. The mill people are at the bottom of the scale.<sup>321</sup>

The struggles between the industrialists and the agrarians were expressed in a variety of ways, but the tensions were most clearly manifested in disputes over education and infrastructure. In the 1920s, questions of who should be educated, how long they should be educated, and who should pay for it all "became objects of struggle between counties, between the county and state levels of government, and between agricultural and industrial capital."<sup>322</sup> The state was encouraging the building of consolidated schools, which would boost the number of children going to school, provide better educational opportunities, and drastically reduce the administrative costs of education.<sup>323</sup> Though farmers generally did not oppose school consolidation, since it would improve access to education for their children, a sizable contingent resisted the move, and preferred instead that their children stay at home and work on the farm.<sup>324</sup>

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319. *Id.* at 40.

320. *Id.*

321. *Id.* (internal citations omitted).

322. *Id.* at 125.

323. WALTER R. TURNER, PAVING TOBACCO ROAD: A CENTURY OF PROGRESS BY THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION 20 (2003).

324. WOOD, *supra* note 281, at 125–26.

One consequence of the consolidated schools, however, was longer commutes for students and the rise of school buses.<sup>325</sup> The longer commutes led many families to join the industrialist demands for improvements in infrastructure and, like the fight over the public education system, the same forces squared off over infrastructure improvements.<sup>326</sup> Supporters argued that roads and bridges would serve as veins connecting North Carolina's factories to raw materials, workers,<sup>327</sup> and markets for manufactured goods.<sup>328</sup>

But statewide progress on infrastructure development was neither consistent nor cohesive, largely because the responsibility of improving infrastructure was left to county governments,<sup>329</sup> and often "the construction of roads was determined on the basis of political patronage rather than economic necessity."<sup>330</sup> Despite this poor track record, there was a growing reliance on government to provide public goods and spend on the public's behalf.<sup>331</sup> This was a relatively new idea to a state that had previously been dominated by Democratic policies of fiscal restraint,<sup>332</sup> but gradually, North Carolina began to take on a more expansive role for developing infrastructure statewide.

### C. A "Good Roads" State

The early 1920s was a dynamic time in North Carolina, and Rockingham County was no exception. Changing beliefs about government spending, coinciding with the multiple demands of industrialization, led to a ballooning of public expenditures to previously unheard-of levels.<sup>333</sup> Since most of the burden fell on county governments, these expenditures were propped up by dramatic increases in property taxes.<sup>334</sup> Rockingham County, for

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325. Thomas C. Parramore, *Express Lanes and Country Roads: North Carolina, 1920–2001*, in *THE WAY WE LIVED IN NORTH CAROLINA*, *supra* note 51, at 541.

326. *See id.* at 549 (describing the clash between sectionalism and unity).

327. WOOD, *supra* note 284, at 126.

328. Parramore, *supra* note 325, at 546.

329. WOOD, *supra* note 284, at 126.

330. *Id.*

331. LEFLER & NEWSOME, *supra* note 293, at 602–03.

332. *See supra* note 318 and accompanying text.

333. Parramore, *supra* note 325, at 470–71 ("The period 1920 to the present saw the construction here of the nation's longest state-maintained system of roads, the establishment of great national forests and state parks, [and] the emergence of a vast panoply of tourist accommodations.").

334. *See* STATE OF N.C. COMM'R OF REVENUE, *supra* note 116, at 488; STATE OF N.C. COMM'R OF REVENUE, *supra* note 117, at 488 (showing a 57% increase in collected county taxes in North Carolina from 1921 to 1925).

example, witnessed a property tax rate increase from 0.95% to 1.35% in 1923.<sup>335</sup> While these increases were partly a consequence of the costs and debt the county assumed to implement Mebane's plans, the additional resources were largely spent on projects that all of North Carolina's counties were forced to assume.<sup>336</sup> Such projects included constructing new school buildings<sup>337</sup> and jailhouses, but the lion's share of the new tax revenues was being used to fund new infrastructure.<sup>338</sup>

In 1912, only about ten percent of North Carolina's 48,000 miles of roads were "improved," meaning that the roads were covered by something other than mud or dirt.<sup>339</sup> During the 1910s, however, the dramatically increased availability of affordable cars like the Ford Model T made the need for better roads necessary.<sup>340</sup> According to historian Robert Ireland, "Only one obstacle remained to be overcome before North Carolina could take full advantage of the auto age, and that was the enormous task of building a statewide system of highways and roads capable of handling the rapidly increasing automobile population."<sup>341</sup> In addition to highways, the plentiful waterways also meant that the state would need new bridges to carry traffic over water previously traversed only by ferries.<sup>342</sup>

Infrastructure construction was done by manual labor and was expensive, time-consuming, and difficult,<sup>343</sup> but despite the costs, the condition of North Carolina's road system improved dramatically in the 1920s. Much of the political demand for improved roads was organized by the state's "Good Roads Association," an active

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335. *Supra* note 116 and accompanying text.

336. See HUNTINGTON HOBBS, JR., NORTH CAROLINA: AN ECONOMIC AND SOCIAL PROFILE 189-93 (1958) (describing North Carolina's tax system).

337. The county followed the statewide trend of closing down rural schools and replacing them with consolidated schools, specifically in Wentworth, the county seat, and Bethany. See, e.g., Carter, *supra* note 80, at 1; Spencer J. Maxcy, *The Idea of Consolidation in Southern Education During the Early Decades of the Twentieth Century*, 53 PEABODY J. OF EDUC. 216, 216 (1976) (noting that "North Carolina served as the southern launching site" for the school consolidation movement).

338. For example, \$34,000 was dedicated to building a jail in 1911, \$400,000 to build roads in 1922, and \$547,000 for more road projects in the county. Editorial, *The Tale of a Bridge (Series No. 27)*, TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Apr. 9, 1924, at 1.

339. TURNER, *supra* note 323, at 1.

340. *Id.* at 7.

341. ROBERT E. IRELAND, ENTERING THE AUTO AGE: THE EARLY AUTOMOBILE IN NORTH CAROLINA, 1900-1930, at 58 (1990).

342. See BUTLER, *supra* note 48, at 48-50.

343. To counteract some of the costs, much work was done by prison chain gangs. See TURNER, *supra* note 323, at 1.

political group led by the spirited civic activist Harriet Berry.<sup>344</sup> In 1921, the advocacy group presented the North Carolina legislature with plans to develop a statewide system of improved roads, and new bridges were an essential element to the system.<sup>345</sup> Requiring a commitment of \$50 million,<sup>346</sup> the plan<sup>347</sup> was approved, and North Carolina soon gained national acclaim for being “the Good Roads State.”<sup>348</sup> Indeed, the Good Roads movement was so successful that “schools were closed so that children could help out, and even Governor Craig . . . traded his customary business suit for a pair of overalls and spent a day on the road crew.”<sup>349</sup>

Rockingham County’s commissioners also saw the value of the Good Roads movement. When resolving to create a chamber of commerce in 1923 to encourage regional business development, the board of county commissioners stressed the importance of infrastructure improvements that had been put in place during the preceding years.<sup>350</sup> The board also resolved to continue such improvements, “the completion of which . . . [would] place Rockingham County near the top of Good Road Counties in North Carolina, and possibly in the entire South.”<sup>351</sup>

So the Mebane proposal in early 1923 for a new road and bridge connecting Reidsville and Leaksville was part of a statewide trend that, in the end, met impressive success. But given the county’s and the state’s history of Whigs and Republicans battling Democrats, industrialists battling agrarians, and elites favoring modernization battling Jeffersonians hostile to government expenditures,<sup>352</sup> it was

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344. See Harriet Morehead Berry Papers, Manuscripts Department, Library of the University of North Carolina at Chapel Hill, *available at* <http://www.lib.unc.edu/mss/inv/b/Berry,H.M.> (concluding that Berry’s efforts “increased the membership of the North Carolina Good Roads Association from 272 to 5,500 members and built its treasury from less than \$2,000 to more than \$12,000.”); STEPHEN W. TAYLOR, *THE NEW SOUTH’S NEW FRONTIER* 24 (2001).

345. See TURNER, *supra* note 323, at 21.

346. See Parramore, *supra* note 325, at 541.

347. Passed as the Highway Act of 1921, the Act included gasoline tax of one cent per gallon and \$50 million of state bonds to pay for “hard surface and other dependable roads connecting by the most practical routes the various county seats and other principal towns of every county.” TURNER, *supra* note 323, at 12–13. Responsibility for the care and ownership of 5,500 miles of county roads fell on the state. *Id.* at 13.

348. See TURNER, *supra* note 323, at 11, 13.

349. *Id.* at 23.

350. See Meeting Minutes from the Rockingham County Bd. of Comm’rs (May 5, 1923) (on file with the North Carolina Law Review).

351. *Id.*

352. See generally Fletcher M. Green, *Democracy in the Old South*, 12 J.S. HIST. 3 (1946) (outlining traditional dividing lines in Southern politics).



not completely unexpected that a schism would emerge between those favoring Mebane's rush towards modernity and those opposing policies that favored industrial interests. The county's state of debt, its high taxes, the questionable need for a second bridge so close to one recently built, and the suggestion of government corruption all certainly added fuel to the political fire, but by the time the legal dispute reached the United States Court of Appeals for the Fourth Circuit, those temporal issues had passed: Mebane had died, his political supporters had been thoroughly defeated, and Rockingham's county commissioners had been cleansed from the scandals of the past.<sup>353</sup> Nonetheless, the larger policy concerns that marked North Carolina's political history, and the challenges the state confronted in its effort to modernize and industrialize, were still alive, and they very much concerned Judge John J. Parker.

#### *D. Judge John J. Parker*

John Johnston Parker was born in 1885 in Monroe, North Carolina, to a prominent family that boasted among its ancestors a United States Supreme Court Justice, a United States Senator, and an original Plymouth colonist.<sup>354</sup> After a rather modest childhood, Parker attended the University of North Carolina at Chapel Hill, where he studied and worked as a clothing salesman to finance his education.<sup>355</sup> The future judge more than held his own in the classroom, earning an A.B. in 1907—graduating with the highest marks in his class and a G.P.A. higher than any previous UNC undergraduate<sup>356</sup>—and an L.L.B. the following year.<sup>357</sup> He also showed early promise for a career in politics, twice winning his class presidency, earning the presidency of the Phi Beta Kappa Society,

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353. Cf. *County Give a Majority of over 2000*, REIDSVILLE REV. (Reidsville, N.C.), Nov. 5, 1924, at 1 (showing sweeping electoral defeat of Mebane's proponents).

354. Parker's mother, Frances Ann Johnston, descended from James Iredell, an Associate Justice of the United States Supreme Court appointed by George Washington; Samuel Johnson, North Carolina's first United States Senator; and William Bradford, a leader of the Plymouth colony. Peter G. Fish, *Parker, John Johnston*, in 5 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY*, *supra* note 65, at 16–19; see Judge Harold R. Medina, John Johnston Parker 1885–1958, Address at the Unveiling of the Portrait of Judge Parker at the University of North Carolina (Feb. 18, 1960), in 38 N.C. L. REV. 299, 299–301 (1960).

355. See Medina, *supra* note 354, at 299–301.

356. See Fish, *supra* note 354, at 17; Medina, *supra* note 354, at 300. He also won numerous academic awards as an undergraduate, including the Greek prize, the Economics prize, the Law prize, and the Orator's medal. American Bar Ass'n, *John J. Parker: Senior Circuit Judge: Fourth Circuit*, 73 A.B.A. J. 856, 857 (1946).

357. See Fish, *supra* note 354, at 17.

and organizing a group to oppose “fraternities and other secret societies” that were deemed undemocratic.<sup>358</sup> He received only one ‘C’, in a logic course taught by his eccentric mentor Horace Williams, who later was forced to explain, “My A’s are saved for that person who is interested in philosophy as a professional matter . . . .”<sup>359</sup>

Following his graduation from UNC in 1908, Parker began his career as an attorney in Greensboro, moved to Monroe two years later to start his own law firm, and in 1923 was selected to head one of Charlotte’s preeminent law firms, where he was in general practice until his appointment to the bench in 1925.<sup>360</sup> He quickly earned a record of achievement nearly as illustrious as his academic record at UNC, including arguing successfully before the United States Supreme Court to overturn a noteworthy decision by the Supreme Court of North Carolina<sup>361</sup> and serving as defense counsel in many historic criminal cases.<sup>362</sup> Parker also became actively involved in the state Republican Party after being drawn at an early age to the party’s progressive vision and its belief in constructively harnessing the power of government. But, as a colleague said many years later, “he must have known that he was renouncing the hope of speedy advancement as a member of the opposite party in a town and country ‘where the majority of people vote the straight Democratic ticket almost as a religious duty.’ ”<sup>363</sup> Indeed, Parker was unsuccessful

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358. See Medina, *supra* note 354, at 300. Parker also organized a group to protect freshmen from hazing. *Id.*

359. *Id.* It was said that Williams and Parker “fought like tigers from the first day of the course, as John ‘accepted no thought unless it was made a part of his own thinking.’ ” *Id.* One of Parker’s biographers wrote that “Parker was known as one of ‘Horace’s Cranks’ because of the amount of time he spent both in and out of class, jousting with his eccentric mentor. . . . The two maintained an active correspondence over a thirty year period after Parker left the University.” WILLIAM C. BURRIS, DUTY AND THE LAW: JUDGE JOHN J. PARKER AND THE CONSTITUTION 15–16 (1987); see also *supra* notes 1–6 and accompanying text (chronicling Judge Parker’s exchange with Professor Williams discussing the *Luten Bridge* opinion).

360. See American Bar Ass’n, *supra* note 356, at 857.

361. The United States Supreme Court case was *Farmers & Merchants Bank of Monroe v. Federal Reserve Bank of Richmond*, 262 U.S. 649 (1923). See American Bar Ass’n, *supra* note 356, at 857.

362. See American Bar Ass’n, *supra* note 356, at 857. One of Parker’s notable courtroom successes involved the “celebrated case of Dr. Peacock, who was charged with murder but was acquitted on the ground of insanity.” *Id.* The case pitted Parker against Clyde Hoey, a talented orator and later Democratic Governor and United States Senator. See *id.*; see also National Park Service: Governor Clyde R. Hoey House, <http://www.cr.nps.gov/nr/travel/shelby/gov.htm> (last visited July 31, 2006) (noting that Hoey “had a gift for public speaking and was described as a dignified prosecutor who wore a swallowtail coat”).

363. Medina, *supra* note 354, at 302.

in his candidacies for the United States Congress (1910), state attorney general (1916), and governor (1920).<sup>364</sup>

However, the future judge's political fortunes did not always disappoint. When he was just twenty-three years old, he managed John Motley Morehead II's successful Congressional campaign in 1908, defeating a Democratic incumbent.<sup>365</sup> Morehead II was the grandson of Governor John Motley Morehead and the first cousin of Lily C. Mebane, wife of B. Frank Mebane,<sup>366</sup> and Parker's work on Morehead II's behalf allied him with a very well-connected political family. When Morehead II assumed the chairmanship of North Carolina's Republican Party in 1910, it "was hailed as the inauguration of a new era in the political affairs" because Morehead appealed to emerging business leaders as the state transitioned from an agricultural to an industrial economy.<sup>367</sup> Parker echoed Morehead II's gravitation towards industrial progress in his own political career. In his unsuccessful bid to be elected as North Carolina's governor in 1920, Parker "identified himself as 'a progressive,' while berating Democratic opponent Cameron Morrison as 'a hopeless standpatter.'"<sup>368</sup> Parker's vigorous campaign, which won more votes than any previous Republican candidate, embraced many progressive policies, including the "Good Roads" plan designed to advance North Carolina industry and improve public works.<sup>369</sup>

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364. See Fish, *supra* note 354, at 17.

365. *Id.* (noting that "[t]he youthful Parker climbed the orthodox political ladder" in part by managing the successful campaign).

366. See Herring, *supra* note 53, at 118. Whether it was through this common connection with the Morehead family, Greensboro's proximity to Leaksville, or simply mutual notoriety, Parker and Mr. and Mrs. Mebane were friends during the 1920s. Among Judge Parker's papers on file at the University of North Carolina at Chapel Hill are at least seven personal notes between Parker and the Mebanes. See Letter from William Giles Mebane to John J. Parker (July 18, 1921), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 1, Folder 1; Letter from John J. Parker to William Giles Mebane (July 21, 1921), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 1, Folder 1; Letter from John J. Parker to William Giles Mebane (Sept. 9, 1921), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 1, Folder 1; Letter from William Giles Mebane to John J. Parker (Dec. 7, 1922), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 1, Folder 2; Letter from Lily C. Mebane to John J. Parker (Apr. 30, 1925), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 2, Folder 30; Letter from Lily C. Mebane to John J. Parker (May 12, 1925), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 2, Folder 30; Letter from John J. Parker to Lily C. Mebane (May 15, 1925), in JOHN J. PARKER PAPERS, *supra* note 3, at Box 2, Folder 30.

367. Joseph F. Steelman, *The Trials of a Republican State Chairman: John Motley Morehead and North Carolina Politics, 1910-1912*, 43 N.C. HIST. REV. 31, 31 (1966).

368. Peter G. Fish, *Judge Parker and the Public Service State*, 3 DUKE L. MAG. 37, 38 (1985).

369. See *id.* Parker was also a "motoring buff" and he had been a long-time member of the Good Roads Association. See *id.*

Parker's loyalty to, and connections with, the Republican Party reaped returns in October 1925, when President Calvin Coolidge granted the forty-one-year-old Parker a recess appointment to the United States Court of Appeals for the Fourth Circuit. The position was made permanent two months later, and he remained on the court until his death in 1958, serving as Chief Judge for the final twenty-seven years of his tenure.<sup>370</sup> For a time, it looked as though Parker's tenure on the court was going to be significantly shorter, as he was nominated by Herbert Hoover to the United States Supreme Court in 1930.<sup>371</sup> Parker's confirmation hearings were highly contentious and, in what one political scientist called "a Senate confirmation process run amuck,"<sup>372</sup> ultimately led to his nomination being rejected by a two-vote majority.<sup>373</sup>

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370. See Fish, *supra* note 354, at 17; American Bar Ass'n, *supra* note 356, at 856.

371. See American Bar Ass'n, *supra* note 356, at 857.

372. Peter G. Fish, *The Hushed Case Against a Supreme Court Appointment: Judge Parker's "New South" Constitutional Jurisprudence, 1925-1933*, 9 DUKE L. MAG. 12, 12 (1990).

373. See Fish, *supra* note 354, at 17. Two groups played a central role in Parker's ultimate rejection for a seat on the Supreme Court: the labor and civil rights movements. The labor movement took issue with Parker's decision in *United Mine Workers of America v. Red Jacket Consolidated Coal and Coke Co.*, 275 U.S. 536 (1927), in which the Fourth Circuit upheld a lower court's injunction against a union from fighting "yellow dog contracts." (A "yellow dog" contract prohibits employees from joining a labor union, punishable by termination.) The "opinion ignited massive opposition from members of organized labor and their putative allies in academe, the press, and the Senate." See Peter G. Fish, *Parker, John Johnson* [sic], in 2 GREAT AMERICAN JUDGES: AN ENCYCLOPEDIA 585 (John R. Vile ed., 2003). Parker later defended his rulings, saying he had simply followed two recent Supreme Court rulings that left him without any latitude or discretion. See Richard Kluger, *The Story of John Johnston Parker: The First Demonstration of Negro Political Power Since Reconstruction*, 46 J. BLACKS IN HIGHER EDUC. 124, 125 (2005).

The more damaging accusation came from civil rights leaders who took issue with some comments Parker made during his gubernatorial campaign. Parker, in response to Democratic race-baiting campaign rhetoric that painted Republicans as champions for Black Americans, was reported to have said while accepting the Republican nomination:

The Negro as a class does not desire to enter politics. The Republican Party of North Carolina does not desire him to do so. We recognize the fact that he has not yet reached that stage in his development when he can share the burdens and responsibilities of government. This being true, and every intelligent man in North Carolina knows it is true, the attempt of certain petty Democratic politicians to inject the race issue into every campaign is most reprehensible. I say it deliberately, there is no more dangerous or contemptible enemy of the state than men who for personal and political advantage will attempt to kindle the flame of racial prejudice or hatred.

*Id.* at 124. NAACP leaders seized upon the first part of this statement and led the campaign against his confirmation. See *id.* at 125. Recent scholarship has questioned whether the judge was actually racist, citing his judicial record that conveyed contempt for

Although Judge Parker never reached the Supreme Court, he became a deeply respected jurist of national stature during his tenure on the Fourth Circuit and also served as an alternate member of the military tribunal in Nuremberg, Germany, from 1945 to 1946.<sup>374</sup> In many respects, the lessons from Nazi Germany confirmed important tenets of Parker's judicial and political philosophies—his fears of democratic excesses and his estimation of the courts as an essential arbiter in negotiating the balance of powers.<sup>375</sup> He strongly subscribed to a “Madisonian-Marshallian model of American government [which] had succeeded where ancient democracies had failed because of institutional protections ‘against the tyranny of temporary majorities.’”<sup>376</sup> He became a leader of the “judicial administration movement” that promoted legal reforms to enhance legal autonomy, judicial expertise, and judicial pragmatism,<sup>377</sup> and his own jurisprudence reflected a support for centralizing governmental powers to enhance administrative efficiency, coordination, rationalization, and stability.<sup>378</sup> He believed that “[i]nefficient state government could be traced to a fragmented organization which, in turn, gave rise to political irresponsibility,”<sup>379</sup> and that government, if executed effectively, could be a productive resource to tackle economic and social challenges and serve “as a vehicle for realizing economic development in the southern states.”<sup>380</sup>

When considered within the context of North Carolina's sweeping economic development in the 1920s, Parker's *Luten Bridge* illuminates this jurisprudence. The state was undergoing dramatic

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both regional chauvinism and white supremacy and his membership in the North Carolina branch of the Commission on Interracial Cooperation. See Fish, *supra*, at 585. Regardless of his true position on race relations, Parker could not escape the lasting effects of his comments from his time in partisan politics. See American Bar Ass'n, *supra* note 356, at 858.

374. See Fish, *supra* note 354, at 19.

375. See Peter G. Fish, *Guarding the Judicial Ramparts: John J. Parker and the Administration of Federal Justice*, 3 JUST. SYS. J. 105, 110–13, 117–19 (1977).

376. See *id.* at 107 (quoting Address by the Honorable John J. Parker, N.Y. COUNTY LAWYERS ASS'N Y.B. 358 (1932)). As Professor Fish notes in his comment, Parker's “good government” values expressed pointed concern for “the breakdown of local government,” including dangers of corruption and indebtedness. See Fish, *supra* note 121, at 1922–26. While *Luten Bridge* certainly offered a vehicle through which Parker could express these values, Professor Fish observes that perhaps Judge Parker's exposure to the *Luten Bridge* case weighed heavily on the judge's later commitment to promote constitutional reforms to stabilize local government. *Id.*

377. See Fish, *supra* note 121, at 1925–26.

378. *Id.*; see also Fish, *supra* note 354, at 17–18.

379. Fish, *supra* note 368, at 38.

380. Fish, *supra* note 354, at 12.

economic change, and the role of government was changing nearly as rapidly, evidenced especially by the tremendous demands for public spending on infrastructure.<sup>381</sup> Parker recognized the challenges that faced local governments as they went through this transition, and the *Luten Bridge* opinion became like so many of Parker's other decisions that "suggest a solicitude for often hard-pressed state and municipal governments."<sup>382</sup> The opinion reflects this "solicitude" for local governments, and, as he suggested in his letter to Horace Williams, he hoped the opinion would have important ramifications for the arsenal of powers available to county governments in North Carolina.<sup>383</sup>

### *E. The Opinion, Revisited Again*

With an understanding of the case's historical context—North Carolina's economic transition, the region's social tensions, and the growing responsibilities placed on ill-equipped county governments—the reader can appreciate the original significance of the *Luten Bridge* opinion. It also becomes clear that *Luten Bridge* is an opinion that highlights the most prominent features of Judge Parker's political orientation and jurisprudence. The case falls at the intersection of his good-government commitment to administrative competence and his desire to facilitate industrial development. And since Parker viewed the law as "rules and standards by which society may live—[and thus demanding] interpretation in the light of reason and custom and the changing conditions of the times,"<sup>384</sup> he took it upon himself to write an opinion that could address the era's contemporary challenges. As North Carolina endured the growing pains of industrialization, Parker moved to create legal rules to enable counties to govern themselves effectively.<sup>385</sup>

The first rule Parker articulated was the idea that resignations and reappointments of county commissioners must not hinder a board of commissioners from doing its required work. To the contrary, Parker warned that procedural rules that govern the board must decisively denote the boundaries of legitimate authority. As the facts of the case revealed, legal uncertainty over the board's legitimacy can arise from unclear rules governing the appointment and resignation of commissioners. Consequently, Parker handed

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381. See *supra* notes 325–30 and accompanying text.

382. Fish, *supra* note 368, at 39.

383. See Letter from John J. Parker to Horace Williams, *supra* note 8.

384. John J. Parker, *The Judicial Office in the United States*, 23 N.Y.U. L. REV. 225, 226 (1948).

385. See Fish, *supra* note 368, at 39.

down a bright-line rule to govern succession, holding that a commissioner's resignation becomes official and irrevocable upon its acceptance by the county clerk.<sup>386</sup> In short, if a resignation is inextricably linked to a reappointment, then the lines of authority will not be blurred.<sup>387</sup> Moreover, by centralizing the replacement process in the hands of the county clerk, and insulating it from further democratic instability, Parker advanced his good-government preferences for centralized administration.<sup>388</sup>

Second, Parker's ruling emphasized the importance of distinguishing legitimate, official actions by the board of commissioners from other assorted actions by individual commissioners.<sup>389</sup> This distinction cuts in two ways. On the one hand, Parker emphasized that "[t]here must be a session of the 'board.' This single entity, the 'board,' alone can by its action bind the county."<sup>390</sup> He dismissed the significance of pro-bridge commissioners' meeting in late 1924 to submit their answer, noting that they acted without employing the traditional demarcations of official action. Parker wrote:

It appears that Pruitt, Pratt, and McCollum merely met at the county seat to consider the filing of an answer to plaintiff's complaint. This was not a 'regular' meeting of the board. . . . It was not a 'special' meeting. . . . It was not shown to be a meeting 'called' by the chairman . . . as provided by statute. . . . Consequently any action taken by Pruitt, Pratt, and McCollum with regard to filing an answer was not taken at a meeting of the board in legal session [because c]ommissioners casually meeting have no power to act for the county.<sup>391</sup>

Such informality does not deserve the legitimacy of the county's legal authority.<sup>392</sup>

On the other hand, Parker did not want legal formalism to impede important government affairs and embraced a *de facto* rule of

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386. *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301, 306 (4th Cir. 1929).

387. *Id.* ("The right to accept a resignation is said to be incidental to the power of appointment.").

388. See *supra* notes 377–80 and accompanying text.

389. See *Luten Bridge*, 35 F.2d at 304.

390. *Id.*

391. *Id.*

392. Note that Parker did not need to conclude that the private meeting with Pratt, Pruitt, and McCollum was not a legal session; to reach his ultimate holding, he could have decided only that Pruitt's resignation was official and thus the meeting did not contain a majority of the board's commissioners. Parker's decision to issue the additional ruling to deny authority to the informal meeting reflects his strong objection to arbitrary governing.

governmental authority.<sup>393</sup> Consequently, simply “discharging the duties of a county commissioner” was enough to confer legitimate authority if “the invalidity . . . arose from a want of power or irregularity unknown to the public.”<sup>394</sup> In Parker’s view, Hampton earned this *de facto* authority by dutifully assuming the responsibilities of county commissioner. But, Parker noted, the highest priorities—the efficient operation of government and all its indispensable duties—are at stake, for legal formalities cannot be divorced from the essential public functions that legal institutions are charged with fulfilling:

The only government which the county had for a period of nearly 10 months was that which [Hampton] and his associates, Martin and Barber, administered. If their action respecting this contract is to be ignored, then, for the same reason, their tax levy for the year must be treated as void and the many transactions carried through at their 25 meetings, which were not attended by Pruitt, Pratt, or McCollum, must be set aside. This cannot be the law. It ought not be the law anywhere; it certainly is not the law in North Carolina.<sup>395</sup>

In short, Parker feared that a fidelity to formalism would impede county leaders from assuming important governmental functions. He thus adopted pragmatic rules that would both stabilize and endorse the authority that leaders would assume during a time of legal uncertainty.

Lastly, and perhaps most important, Parker’s opinion cemented the notion that county boards must have the full authority to enter into, and credibly commit to, contracts with private parties.<sup>396</sup> This authority extends especially to politically unpopular contracts and contracts for long-term projects that last into the reign of succeeding boards (who might prefer different policies).<sup>397</sup> Such agreements must be insulated from political upheaval, shifts in power stemming from subsequent elections, and “the tyranny of temporary

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393. See *Luten Bridge*, 35 F.2d at 306–07.

394. *Id.* at 307.

395. *Id.* at 306.

396. See *id.* (noting that “[t]he rule is well settled in North Carolina, as it is elsewhere, that the acts of a *de facto* officer will be held valid in respect to the public whom he represents and to third persons with whom he deals officially”).

397. At the outset, Parker was clearly concerned about the integrity of the underlying contract. In a memorandum to the other judges on his panel, he wrote “I think that the contract was valid and that the board had no right to rescind it.” Memorandum by John J. Parker on Case No. 2873 [*Luten Bridge*], *supra* note 238.



majorities,”<sup>398</sup> such as the angry tax revolt engineered by Rockingham County’s citizens. Accordingly, Parker concluded that although the county’s repudiation of the contract meant the Luten Bridge Company should have stopped construction, and consequently the district court miscalculated the damages, “[i]t is true that the county had no right to rescind the contract, and the notice given plaintiff amounted to a breach on its part.”<sup>399</sup>

This final point does not receive a lot of emphasis in Parker’s opinion, but its importance should not be understated. Recall that Rockingham County originally denied that any legally binding contract was ever made, arguing that the contract was entered into under undue influence and was contrary to public interest.<sup>400</sup> However illegitimate Mebane’s usurpation of power might have been, permitting Rockingham County to advance such a defense would damage all counties’ credibility when committing to contracts.<sup>401</sup> This would undermine a source of authority that counties need most to meet the demands of industrialization, since contracting with private parties—bridge companies, railroads, and educators—is essential to meet demands for public improvements.

Consequently, to Parker, the *Luten Bridge* case did indeed (as he wrote to his mentor Williams) address important issues of county government law and implicated policies that were critical to a changing North Carolina. In this respect, sensible rules that govern North Carolina’s counties went hand-in-hand with sensible rules for contract law. Unless a county was able to commit to a contractual relationship like any individual, a county would be severely hindered from addressing the needs of an industrializing society.

But perhaps the most striking lesson is the simplest—that *Rockingham County v. Luten Bridge Co.* was intended to do far more than simply reaffirm the duty to mitigate. To the contrary, the case was not so much about permitting counties to get out of contracts, but rather, about enabling counties to enter into contracts.

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398. Fish, *supra* note 375, at 107.

399. *Luten Bridge*, 35 F.2d at 307.

400. See *supra* notes 235–36 and accompanying text.

401. This issue was on the minds of those who watched both the political spectacle unfold and the dispute make its way through the courts. Many understood that releasing the county from its contractual obligation would enable any board of county commissioners to “arbitrarily repudiate” contracts entered into by prior boards. See *supra* note 278 and accompanying text.

## CONCLUSION

While the lasting image from *Rockingham County v. Luten Bridge Co.*—the unwanted bridge arching gracefully through the forest—has come to be associated with the duty to mitigate damages in American contract law, the story behind the case and the context in which it occurred expose a far different picture. The story reveals an angry electorate engineering a tax revolt against suspected corruption and sending an isolated county into political upheaval. The context reveals a community in transition in an industrializing South that found its public institutions ill-equipped to navigate through the classic tensions between traditionalism and modernization, agriculture and industry, demand for government services and distrust of power.

Judge Parker was well aware of these conflicts and delivered his opinion with them in mind. He recognized that his native North Carolina was rapidly changing, believed that courts had a duty to clarify the law and facilitate this transition, and saw in *Rockingham County v. Luten Bridge Co.* an opportunity to apply a jurisprudence that he had developed over many years in politics and on the bench. In Parker's mind, these conflicts were paramount, and devising rules of damages to include a duty to mitigate was secondary.

B. Frank Mebane never saw any of the trials related to his bridge. He died suddenly on June 15, 1926, after three days of illness in New York City, while traveling en route to London to meet his wife.<sup>402</sup> Dying without children, Mebane left his entire estate, then valued at \$2,000,000, to Lily.<sup>403</sup> News of his death received national attention and was the major news story of the week in the North Carolina Piedmont, with headlines such as "His Name is Written Large in Economic History of Rockingham County."<sup>404</sup> It could not have gone unnoticed by any of the parties to the Fishing Creek Bridge controversy. Interestingly, there is no record of Mebane ever speaking out about the bridge project even though he lived in Spray during the pivotal years of 1923 and 1924, and it appears that he never granted a newspaper interview.<sup>405</sup> But some current residents of Rockingham County credit the flamboyant, impatient, and politically

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402. *B. Frank Mebane, of Spray, Is Dead After Three Days Sickness*, GREENSBORO DAILY NEWS (Greensboro, N.C.), June 16, 1926, at 1.

403. *Mrs. Mebane Inherits Estate of \$2,000,000*, WASH. POST, June 30, 1926, at 13.

404. See *B. Frank Mebane, of Spray, Is Dead After Three Days Sickness*, *supra* note 402.

405. But see *supra* notes 201–02 and accompanying text (indicating that Mebane might have participated in the debate by directing the reporting of one of the newspapers).

manipulative Mebane for driving the county into the twentieth century.<sup>406</sup> The county's traditional agrarian culture was hostile to the changes that, in retrospect, might seem to have been necessary, and many of today's citizens of Rockingham concede that they now are thankful for Mebane's will to confront his political opponents.<sup>407</sup>

Judge Parker lived into his thirty-third year as a circuit judge, dying in 1958 while still on the bench. Few judges had careers as accomplished as Parker's, but it is likely that he never knew of the fame and legacy he would enjoy from his *Luten Bridge* opinion. Though the case appeared in Williston's casebook two years before Parker's death, it was not until the early 1960s that it became a staple in first-year contracts texts.<sup>408</sup> And perhaps the penultimate testament to the lasting significance of the case did not arrive until 1979, fifty years after Judge Parker wrote the famous opinion, when *Luten Bridge* was included in the Restatement (Second) of the Law of Contracts to demonstrate the duty to mitigate principle.<sup>409</sup>

After the tumult of the 1920s, the Fishing Creek Bridge sat quietly over the Dan River during the 1930s, unencumbered by traffic and alone in the woods.<sup>410</sup> Occasionally the remote bridge played host to picnics and parties attended by young people from the area, including some elegant dinners and dances.<sup>411</sup> Through the following decades, the absurdity of the Fishing Creek Bridge's existence became part of Rockingham County folklore and soon "Mebane's Bridge" also became known as "Mebane's Folly."<sup>412</sup> All the while, there were questions about who owned the bridge. If Rockingham County never paid for the bridge (assuming Spray Water Power and Land did, in fact, make the ultimate payment to the Luten Bridge Co.), some suggested that the county might not own the bridge, and so it might collect property taxes from the actual owner.<sup>413</sup> In 1935 any question as to the ownership of the bridge was answered when the North Carolina State Department of Transportation assumed

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406. See Edmonston, *supra* note 66.

407. Cf. Carter, *supra* note 77, at 15 ("The writer thinks perhaps [Mebane] was a generation ahead of his time.").

408. See *supra* notes 13–14 and accompanying text.

409. See RESTATEMENT (SECOND) OF CONTRACTS § 350 illus. 1 (1979).

410. Though the span itself was complete, neither of the ramps leading up to the bridge had been constructed. As it stood, the bridge nearly reached the cliffside on one bank of the river, but its other end hung high off the ground. Anderson, *supra* note 62.

411. Edmonston, *supra* note 66.

412. See Carter, *supra* note 80, at 1. One rumor says that the bridge was featured in "Ripley's Believe It or Not," though that remains unconfirmed. *Id.*

413. See *Settlement in Fishing Creek Bridge Muddle*, *supra* note 1.

ownership of the bridge and finally connected the bridge to dirt roads leading to Spray and Leaksville.<sup>414</sup>

In a last-gasp effort to reclaim their losses on the Fishing Creek Bridge, the Luten Bridge Company instituted another lawsuit in 1936, this time against the state highway commission for \$9,800.<sup>415</sup> At the time, the company stated that “the bridge cost \$44,000.00 and that only \$34,200.00 had been paid, with \$9,200.00 of it coming from the county and \$25,000.00 from the Spray Water Power and Land Company.”<sup>416</sup> The suit was thrown out after the Luten Bridge Company failed to appear at a scheduled court date.<sup>417</sup> The company does not appear in any further public records in Rockingham County.

In 1968, the State Department of Transportation finally paved a road on both sides of the bridge. Dismissing the span’s actual name, the Fishing Creek Bridge, the new street signs read “Mebane Bridge Road.”<sup>418</sup> And what might be the bridge’s final chapter arrived in the fall of 2003, when the famous bridge was permanently closed to traffic. The single-lane bridge still crosses high above the Dan River and remains available for pedestrians, and it now ingloriously supports a sewage pipe leading to Eden’s water treatment facility.<sup>419</sup> There have been threats that North Carolina’s Department of Transportation might decide to demolish the bridge,<sup>420</sup> but that sewage pipe might just save the bridge from destruction. However long it remains above the Dan River, Mebane’s Bridge will serve as a monument to industrial ambition, cronyism, a countryside in transition, Judge Parker’s most famous opinion, and one of the most bizarre and heated moments in Rockingham County’s history.

#### A NOTE ABOUT SOURCES

Of the many sources used to prepare this Article, none were more important than the three local newspapers that captured the relevant events as they unfolded: the *Reidsville Review*, the *Tri-City Daily Gazette*, and the *Leaksville Daily News*. And we quickly learned that the newspapers did far more than document and report events. As Rockingham County experienced a crisis in government,

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414. See Anderson, *supra* note 62.

415. *Bridge Concern Again Lost Its Fight Last Fri.*, LEAKSVILLE NEWS (Leaksville, N.C.), Aug. 6, 1936, at 1.

416. *Id.*

417. Lewis, *supra* note 100.

418. See EDEN HISTORIC PRESERVATION COMMISSION, A TALE OF THREE CITIES: EDEN’S HERITAGE 270–71 (2d ed. 1998).

419. Carter, *supra* note 80 at 16–17.

420. *Id.* at 17.

the newspapers became active contributors to the county's surge of participatory democracy.

As was noted above, the *Reidsville Review* and the *Tri-City Daily Gazette* took clear and opposing sides in the dispute over commissioning a new bridge.<sup>421</sup> Together, the two newspapers organized the debate and facilitated communication between the many different parties. For example, both newspapers regularly published the full text of letters between the commissioners, the mass meeting organizers, and other public officials. A typical instance occurred when Democratic Party chairman T.B. Wilson wrote a letter stating that though he had originally opposed the bridge, the commissioners should be left alone to run the county.<sup>422</sup> The letter was published on the front page of the *Tri-City Gazette*, and the next day a response from the Citizens' Committee was published on the front page of the *Reidsville Review*.<sup>423</sup>

The two newspapers, along with the *Leaksville Daily News*, also took great care to capture details of the debate for its readers, particularly the events surrounding the mass meetings. In an age before real-time communication and widespread literacy, citizens relied upon the newspapers and mass meetings to learn about popular sentiments and to communicate with each other. The article below, excerpted in its entirety (to the degree that the microform was legible, and with grammatical mistakes uncorrected), captures both the functionality of reporting at the mass meetings, the critically important role of reporters, and the texture of the debate, the era, and Rockingham's citizens.

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421. See *supra* notes 200–08 and accompanying text.

422. T.B. Wilson, *Democratic County Chairman Condemns Mass Meeting and Upholds Orderly Government*, TRI-CITY DAILY GAZETTE (Leaksville, N.C.), Jan. 30, 1924, at 1. Wilson's letter reads:

If they have the legal right to act (and the courts have decided they have) and they have seen fit to go ahead and build the bridge, then pray tell me what good the continued agitation of the matter will do. Why tear the county to pieces and fan hatred and ill-will among our people when it will do no good?

*Id.*

423. See *Mass Meeting Will Be Held at Wentworth Monday February 4th*, REIDSVILLE REV. (Reidsville, N.C.), Feb. 1, 1924, at 1.

Leaksville News

Leaksville, N.C. Tuesday, April 8, 1924

Vol. 1, No. 3, page 1

*Mass Meeting Held At Wentworth Monday Was Well Attended:  
Committee Reported Progress of Move to Block Building  
of Fishing Creek Bridge and Appointed Second  
Committee to Seek Chairman Pratt's Resignation.*

The anti-bridge clans met in Wentworth yesterday several hundred strong and filled the county court house to capacity, in pursuance to a call from the committee appointed at a former meeting. They met to hear the report of the committee and to take such action as they deemed necessary. Long before the hour for meeting interested parties began arriving in the county seat. They came from all corners of the county and all seemed to have but one purpose in view—to prevent the erection of the Fishing Creek Bridge.

Chairman Montgomery called the meeting to order and appointed the newspaper men present, M.O. of the Reidsville Review and W.P.E. of the Leaksville News, Mssrs. M.T. Smith of Reidsville and T.H. Barker of Leaksville as secretaries. Upon making this organization Chairman Montgomery made his report to the meeting. He recounted that it had been said by a member of the board that the building of this bridge had created a great deal of talk, and that if the bridge was built a hard surface road would also have to be built. That a letter had been sent to the bridge company in Tennessee that it was not in the public interest to have this bridge erected and that the letting of a contract was also not in the public interest. The bridge company was advised to take no further steps toward building the bridge. A resolution was read to the meeting setting forth that the contract made by Chairman Pratt was not official and a second letter was mailed renouncing the contract. No reply was had from the first letter but the second brought a reply from attorneys for the bridge company that they proposed to go ahead with the work and expected the county to live up to its end of the contract.

Reports were then heard from citizens of the different townships. A Mr. W. made a short talk and said he found no necessity for the bridge. The writer did not get the name of the township from which Mr. W. hailed.

Mr. Robertson of Leaksville township had quite a bit to say and quoted conditions existing way back in Bible times which furnished parallel cases with existing conditions in Rockingham today. He addressed some pointed remarks to a representative of the bridge company who was present at the meeting.

Mr. B.B. McKinney, a gray-haired veteran of Williamsburg township followed Mr. E. and said he was reminded of conditions as related in the Bible, and thought the people were getting too far away from the old laws in their mad scramble for money and power, and closed his remarks with a little piece of poetry which had come into his mind this morning.

Mr. Webster of Huntsville township reported that his township, so far as he could learn was 100 per cent apposed to the building of the bridge.

Mr. Bill J. of Madison reminded the gathering that Rockingham had given the state its Morehead and its Reid, and the spirit of those men was still in the hearts of Rockingham citizens. He took his seat without mentioning the word bridge, but immediately bethought himself of his omission and arose to remark that Madison was unanimously opposed to it.

Mr. Carter of New Bethel township found one man who favored the bridge and thought he was a hopeless minority.

The representative from Stoneville said there was only one man in his township in favor of the bridge and that he was red-headed.

Price township was reported 100 per cent opposed to the building of the bridge.

Farmer Purdy, who lives near Leaksville, gave a long talk on conditions in his township and in his own community particularly, and reported opposition to the bridge.

M.D.H. of Reidsville reported his township squarly against the bridge because no one could be found who ever asked for it and could find no authority for its erection.

Wentworth reported that there were a few in that township who favored the bridge.

This completed reports from the different townships and it [?] like the crowd wanted anything but a bridge right then. They seemed to be unanimous in the opinion, and to cinch the matter the chairman called for visible evidence of the unanimity of the meeting by asking all who opposed the bridge to stand up. Practically every one in the house rose to his feet. Calling for those who favored the bridge to do likewise there was not one to rise and let it be known. So it is to be taken for granted that the crowd was unanimous.

But this meeting could not come to a fitting close without a word from Leaksville's insurgent anti-bridgeite, Mr. A.D. Ivey, and he was prepared to tell the world that he was opposed to the bridge and didn't have to wear a hood or a mask to go about what he had to do. He reminded the gathering that in the veins of Rockingham citizens flowed the blood of their fathers who fought to throw off the yoke of British oppression and said

back to Robert B[?] at [?] and on down to the present day, and said that Kaiserism was wiped from the earth when four million of our own boys erased the [?] and crushed the ambition of Wilhelm for world monarchy. He stated that it had been charged that opponents of the bridge were opposing constituted government, but he denied that such was the [?] but rather that they were opposing the "[?]" government. He didn't think the citizens of the county could be frightened or bullied into acquiescing to any transaction that was inimical to the public good.

On motion of Mr. T.H., duly seconded and approved by [?] of the gathering, a committee of twenty-five was ordered appointed by the chairmen to wait upon Chairman Pratt of the county board of commissioners and ask his resignation as a member thereof. Several amendments were offered, but the meeting adjourned for lunch and reassembled in the afternoon when the chairman read the following names as members of the committee: [illegible names].

The manner of calling on the chairman to deliver the request was then discussed and the matter was finally settled by instructing the committee to retire and decide for itself. This they did and reported back that they committee would attend the meeting of the board until Mr. Pratt, who was reported in delicate health, should appear and would then deliver the request to him. This finished the business for which the meeting was called and a [?] was vociferously called to adjourn.

After adjournment the crowd gathered in the court yard in clusters and discussed the matter. Many stayed about till adjournment of the board, fearing the proponents of the bridge might appear and try to put something over on them. In the language of one of them they were going to stay there and watch the back door to see that nobody got in.

Altogether it was a great day for the populace. They met and had a big time. They got closer together and found in so doing that their interests were so inter linked that they stood as one. There may be other meetings, necessary, they say, but if there is need for it they will be found waiting at the court house when the time comes.