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Francois-Xavier Martin: Printer, Lawyer, Jurist

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The early course of American jurisprudence was charted by little-remembered figures whose influence on their own time was great. Mr. Chiorazzi recounts the accomplishments of Francois-Xavier Martin, a lawyer, publisher, and jurist in North Carolina, who went on to achieve prominence in Louisiana. A bibliography of works about and published by Martin is appended.

I. Introduction

It is not uncommon for legal historians to focus their discussion of the development of American law on the great names of Anglo-American jurisprudence: Blackstone, Kent, Locke, Livingston, and Story. These were the fathers of modern American jurisprudence, men who helped shape the law and greatly influenced their contemporaries. They, we are told, were the shining lights who set the direction American law would take. Yet, while their influence on theory was great, their influence on the practice of law and the law itself was not nearly as great. Countless lesser-known men also gave substance to the law. They had to deal with the day-to-day realities of their own town, province, or state. Upon their shoulders was placed the challenge of forming a recognizable body of law from the rough clay that was the developing Republic.

Much of the early development of the law in North Carolina and Louisiana was influenced by a French immigrant, Francois- Xavier Martin. He came to North Carolina in 1783 and became the first printer to begin any real effort to make law books available to the lawyers of the state. In doing so, he helped shape the early development of law in North Carolina. His thirty-four years on the bench, first as a federal judge in the Territory of Orleans, and later as Chief Justice of the Supreme Court of the State of Louisiana, would earn him the sobriquet, "The Father of Louisiana Jurisprudence." His life provides interesting insights into the practice and

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development of the law and law book publishing in the early days of the American republic.

The lawyer of the late eighteenth and early nineteenth centuries was forced to practice with few law books to guide him and little formal education to rely upon. He also had to deal with a suspicious and sometimes hostile public. The practice of law was not a popular occupation in post-revolution America,¹ and an oft repeated sentiment was "Every man his own lawyer." The few actual lawyers who did exist were often accused of Loyalist or Tory leanings. Indeed, one reason for the paucity of lawyers in America during the late eighteenth century was the mass exodus after the revolution of many lawyers who were, in fact, Tories and Loyalists.²

The practice of law in most of the country, away from the few cities, was an uncertain science. But this helped attract some of the greatest minds in America to the law. The practice of law was an informal affair. Leading citizens, who often were not lawyers, or even schooled in the law, were called on to judge or represent parties in local actions.³ While this may have sometimes resulted in justice by influence, more often than not it resulted in equitable solutions to problems. Justice consisted of equal doses of common law and common sense.⁴

1. See generally 2 A. CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 5-30 (1965); G. McREE, *LIFE AND CORRESPONDENCE OF JAMES IREDELL, ONE OF THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES* 81-82 (1858); C. WARREN, *A HISTORY OF THE AMERICAN BAR* 211-39 (1911).

2. "North Carolina is at present the most dangerous state. The lawyers are all tories, the people substantially republican, but uninformed and deceived by the lawyers, who are elected of necessity because few other candidates. [sic]" Letter from Thomas Jefferson to P. N. Nichols (April 7, 1800), reprinted in 10 *THE WRITINGS OF THOMAS JEFFERSON* 163 (A. E. Bergh ed. 1907). See also C. WARREN, *supra* note 1, at 212-14.

3. F. AUMANN, *THE CHANGING AMERICAN LEGAL SYSTEM: SOME SELECTED PHASES* 38-40, 62-63 (1940); 2 A. CHROUST, *supra* note 1, at 21, 24; L. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 109-11 (1973).

4. Perhaps this charge to a jury, by a Judge John Dudley of Raymond, New Hampshire—a non-lawyer—best explains the prevailing attitudes of the common man concerning the law and lawyers: You've heard what has been said by the lawyers, the rascals! but no, I won't abuse 'em. 'Tis their business to make out a good case—they're paid for it, and they've done well enough in this case. But you and I, gentlemen, have sunthin else to think of. They talk about law—why, gentlemen, it's not law we want, but justice. They want to govern us by the common law of England; trust me for it, common sense is a much safer guide for us—the common sense of Raymond, Exeter, Ipin [Epping] and the other towns that sent us here to try this case between two of our neighbors. A clear head and an honest heart are wuth more than all the law of all the lawyers. There was one good thing said by 'em though; 't was from one Shakespeare, an English stage-player, I believe. No matter for that; 't was e'namost good enough to be in the Bible—"Be just and fear not." That's the law in this case, gentlemen, and law enough in any case in this court. It's our business to do justice between the parties; not by any quirks o' the law out of Coke or Blackstone—books that I never read and never will—but by common sense and common honesty between man and man. That's our business; and the curse of God is upon us if we neglect or aside from that. And now, Mr. Sheriff, take out the jury; and you, Mr. Foreman, don't keep us waiting with idle talk—too much o' that a'ready! about matters

The practice of law was rarely carried out in plush offices or, for that matter, offices at all. It was more often, literally and figuratively, "a seat-of-the-pants affair." The late eighteenth century American lawyer frequently rode on horseback with the circuit judges who tried cases throughout their districts. This included riding hundreds of miles, through all kinds of weather, to the most remote parts of the state, to try whatever cases awaited them. Comforts were few. They each brought with them a bedroll, a change of clothes, some writing materials and possibly a few books, which they would carry in their saddle bags.⁵

It was no easy feat to become a lawyer. Most were trained while working as clerks in a lawyer's office. The quality of a young clerk's legal education varied greatly. The amount of instruction he received was entirely dependent upon the whims of his sponsoring attorney. To many attorneys law clerks were little more than indentured servants who could perform some of the more unpleasant tasks of the attorney's practice.⁶ Many of the clerks were the sons of wealthy individuals and had neither the temperament nor the inclination to practice law: law clerkship was merely another part of the process of becoming a gentleman. For most clerks, the educational process was a self-taught affair. They read those books that were recommended by the sponsoring attorney or whatever law books were available. The farther inland one traveled, the less likely one was to find the materials a law student needed to educate himself properly.⁷

These factors and others⁸ led to regional differences in the laws of America. In each state the law developed according to the needs, sophistication, and size of its population. In Massachusetts, with its urban centers and early emphasis on manufacturing and shipping, commercial laws were quickly developed, modified, and refined.⁹ In the South, with its rural slave economy and large plantations, personal and real property law was of greater importance, and much of the law practiced there dealt with those subjects.¹⁰

II. Martin in North Carolina

Francois-Xavier Martin was born in Marseilles, France, in 1762, the

that have nothin' to do with the merits of this 'ere case. Give us an honest verdict that common sense men needn't be ashamed on.

Note, 40 AM. L. REV. 436, 437 (1906).

5. 2 A. CHROUST, *supra* note 1, at 47-48; C. WARREN, *supra* note 1, at 124; L. FRIEDMAN, *supra* note 3, at 123-24; 1 THE PAPERS OF JAMES IREDELL II (D. Higginbotham ed. 1976).

6. C. WARREN, *supra* note 1, at 165-87; L. FRIEDMAN, *supra* note 3, at 85.

7. C. WARREN, *supra* note 1, at 172.

8. See generally F. AUMANN, *supra* note 3.

9. L. FRIEDMAN, *supra* note 3, at 69.

10. *Id.* at 74-76. See generally Ely & Bodenhamer, *Regionalism and American Legal History: The Southern Experience*, 39 VAND. L. REV. 539 (1986).

third son of a prosperous merchant. As was often the custom for the third born, Francois was educated for the priesthood, but at the age of seventeen or eighteen he left France to join his uncle in Martinique. The New World apparently offered a much greater attraction than the priesthood. Martin had hoped to help his uncle in his lucrative business of provisioning the French fleet. Soon after his arrival, however, Martin's uncle decided to sell his business and return to France. Without his uncle's business to support him, and unable to make a go of it himself, Martin left Martinique and set sail for America.¹¹ It is uncertain whether he sailed to New York, or landed first in North Carolina and then traveled to New York. It is known that in 1782 or 1783 he spent a short time in New York, apparently in hopes of recovering a debt owed him.¹² With that money he hoped to start a business in the United States. His stay was brief and unsuccessful. Sometime in 1783, he set out for New Bern, North Carolina, penniless, with little knowledge of English and no real skills. Perhaps to avoid starvation, he joined the Continental Army in Virginia during the late stages of the American Revolution.¹³

His military career was a brief one, and if legend is correct, his one and only experience in "combat" would forever haunt him. While taking his turn on guard duty, Martin spied a number of Redcoats. He ran back to his encampment shouting the alarm, "The British are upon us! The British are upon us!" With hearts pounding, the hastily assembled troops marched out to do battle with the British. Fear and apprehension, however, quickly gave way to laughter and mockery when it was revealed that the Hessians were nothing more than red undershirts hung out to dry by a local washerwoman. The nearsighted Frenchman soon deserted to escape the continuing torment of his fellow soldiers.¹⁴

11. H. BULLARD, *A DISCOURSE ON THE LIFE AND CHARACTER OF THE HON. FRANCOIS XAVIER MARTIN, LATE SENIOR JUDGE OF THE SUPREME COURT* 4-5 (1847).

12. In 1786, Martin faced some legal problems stemming from his stay in New York. According to a letter from the French Consul, Mr. Petry, Martin was ordered to pay 589 pounds (American) to the Consul for monies owed to the estate of J.J. Coulougnac who had died intestate. Martin had a judgment from the American Maritime and Mercantile Court for 285 pounds for the salary owed him by Coulougnac, which Martin apparently argued should offset part of the judgment. Mr. Petry offered an extract of a letter written by Coulougnac to his New York attorney, dated 29 Sept. 1785, in which Coulougnac stated that he had found Martin in a tavern in great distress because he was being detained for his inability to pay his bill. "I took him with me by mere commiseration I have clothed him in my own clothes from his head to his feet." All that he promised Martin, he claimed, was room and board. At the time of the letter, Martin had been gone for sixteen months. This places Martin in New York in the spring of 1784. 18 *STATE RECORDS OF NORTH CAROLINA* 693-95, 748-50, 771, 778 (W. Clark ed. 1900).

13. Tinker, *Jurist and Japer: Francois Xavier Martin and Jean LeClerc: With a List of Their Publications in This Library and Elsewhere*, 39 *BULL. N.Y. PUB. L. LIBR.* 675, 676 (1935).

14. *Id.* at 676; W. HOWE, *STUDIES IN THE CIVIL LAW AND ITS RELATIONS TO THE JURISPRUDENCE OF ENGLAND AND AMERICA* 347 (2d ed. 1905).

Upon arriving in New Bern, he worked at whatever jobs were available, including teaching French and delivering the mail. In order to earn extra money while on his mail route, he bought and sold old newspapers. In those frontier times, old news was better than no news. Through this sideline, he developed an interest in printing and resolved to take up the profession. Though he had no knowledge of printing, he approached James Davis, one of the handful of printers in the state, for a job.¹⁵ He feigned a knowledge of typesetting and was given a job. When Davis questioned his typesetting speed, Martin replied that the type used in France was arranged differently than that used in America, and it would take him a while to learn the system.¹⁶ Whether Davis believed Martin or chose to ignore the intelligent Frenchman's lie is not known. But such was Martin's industry, that in a short time he was able to buy his own press and begin his own publishing and printing career.

This he was forced to do without the luxury of the state contract to do the public printing. In the early days of the American republic, it was difficult for printers to run a successful business without the steady income of a state contract,¹⁷ which provided needed capital to buy paper and ink and meet the other expenses of running a printing establishment. The contract also made it possible to procure paper during periodic paper shortages.

The eighteenth century printer was more than a printer; he was also a bookseller, publisher, newspaper editor, writer, and in Martin's case, a postmaster and bookbinder.¹⁸ More often than not, printers were forced to

15. Respected North Carolina historian Stephen Weeks, in his short biography of Martin, states that it would have been impossible for James Davis to have been the printer from whom Martin learned his trade. Rather, it is more probable that it was the printer Robert Keith, who had recently bought Davis's press in New Bern. Weeks, *Francois Xavier Martin*, in 4 BIOGRAPHICAL HISTORY OF NORTH CAROLINA 307-08 (S. Ashe ed. 1906). H. BULLARD, *supra* note 11, at 5, and Tinker, *supra* note 12, at 677, both refer to the printer as James Clark. Bullard may have meant to say Davis. His memoir is based on his conversations with Martin, his colleague on the Louisiana Supreme Court. Perhaps it suited Martin to have it believed that he was taught by Davis, a famous North Carolinian in his own right.

In 1749, the North Carolina Assembly appointed James Davis as the province's first Public Printer. To Davis went the honor of printing the first book in North Carolina, *A Collection of All the Public Acts of the Province of North Carolina . . .*, in 1752. Prior to that time there was no official compilation of the laws of the province. Iredell & Battle, *Preface* to REVISED STATUTES OF THE STATE OF NORTH CAROLINA at ix-x (F. Nash, J. Iredell & W. Battle eds. 1837). Because of age and imperfect the revisal took on a yellowish cast and became popularly known as "Yellow Jacket." Weeks, *James Davis*, in 8 BIOGRAPHICAL HISTORY OF NORTH CAROLINA, *supra*, at 141.

16. H. BULLARD, *supra* note 11, at 5-6.

17. See generally Thornton, *Public Printing in North Carolina 1749-1815*, 21 N.C. HIST. REV. 181 (1944). See also R. SILVER, *THE AMERICAN PRINTER, 1787-1825*, at 65-70 (1967). In November of 1785, Martin first applied for a public printing contract. 17 STATE RECORDS OF NORTH CAROLINA 279 (W. Clark ed. 1899).

18. North Carolina Gazette, March 23, 1793, at 4, col. 1. A number of inhabitants wished to have their mail delivered to their homes, and Martin agreed to do so for fifty cents per annum. He also

concentrate on local markets. Shipping was expensive and frequently resulted in financial losses due to damage caused by long journeys on rutted roads or in the damp holds of ships. It simply was not worth the chance, given the small profit margin a printer worked on. Financial success was more likely in the printing of speeches, sermons, and lectures or minutes of local church groups or fraternal organizations; this type of printing offered the safety of a contract for a specific number of copies and did not waste meager resources.¹⁹

The primary method of business employed by the printers who, like Martin, had no public printing contract was to serve advance notice of subscriptions for books they wished to publish. Subscribers would pay a percentage of the cost of the book, with the remainder to be paid upon publication of the book. If and when a suitable number of subscribers enlisted, work would begin.²⁰ Smaller items such as blank forms were printed in a more speculative manner—anything that might sell was printed. Martin printed a large assortment of blanks such as bills of lading, shipping papers, deeds, leases and a wide variety of pleading forms needed in various types of criminal and civil actions. He also published school books, sermons, almanacs, novels, and a newspaper. Many of these publications contained ads to promote his other works.

His newspaper, *The North Carolina Gazette*, was particularly important in this regard. Publication of Martin's weekly newspaper began in 1786. The earliest known copy in existence is dated July 11, 1787; the last known issue is dated August, 1797. Not surprisingly, there is a great deal of space devoted to current events in France.²¹ His primary advertisers were slave owners who were giving public notice of rewards offered for the capture of runaway slaves. While the amount of ad space Martin gave to his own publications varied according to the amounts of news and paying advertisements he had, the paper always contained ads for his own publications, ranging from a line, "Blanks of all sorts to be had at this

offered "Bookbinding [to be] carried on, on reasonable terms, at the Post, and Printing Office." *North Carolina Gazette*, March 22, 1794, at 4, col. 2. Early in Martin's printing career, he sent books to New York to be bound.

19. Green, *From Printer to Publisher: Mathew Carey and the Origins of Nineteenth-Century Book Publishing*, in *GETTING THE BOOKS OUT: PAPERS OF THE CHICAGO CONFERENCE ON THE BOOK IN 19TH CENTURY AMERICA* 26, 26-28 (M. Hackenberg ed. 1987) [hereinafter *GETTING THE BOOKS OUT*].

20. For an example of a subscription offer, see the first entry under "1791" in section II of the bibliography, *infra*. See generally Hackenberg, *The Subscription Publishing Network in Nineteenth-Century America*, in *GETTING THE BOOKS OUT*, *supra* note 19, at 45.

21. "Current," in the late eighteenth century, meant four to five months previous, if not longer. North Carolina, still largely a frontier state at this time, had to rely on news of Europe arriving through New York, Williamsburg, or Charleston. "The paper is said to have been printed at irregular intervals, when news enough to fill it or make it interesting had reached New Bern. In default of modern methods of distribution, he filled his saddle bags with the newspapers and peddled them about the country." 2 W. BOYD, *HISTORY OF NORTH CAROLINA* 374 (1919).

office," to several columns of books "just published, and for sale at the printing office" and "just imported, and for sale."²²

One of the first items Martin published was a twenty-one page pamphlet, *The Independent Citizen*, an anonymous work that protested a number of statutes passed by the North Carolina General Assembly abridging the right to a jury trial guaranteed in the state constitution. The several typographical errors lend support to the supposition that this is one of Martin's first publications.²³

A printer also could make a lucrative trade in the piracy of popular novels.²⁴ Martin translated popular French novels into English and then printed them without concerning himself with copyright violations: the little international copyright law that existed at the time was totally ignored throughout the world. Of these novels one biographer noted that Martin "perpetuated a long list of incredibly dull novels which pleased the taste of the day."²⁵ Among the novels he printed were: *Adelaide de Sancerre* (1801), *Historical Memoirs of Stephanie Louis de Bourbon-Conti* (1801), *Lord Rivers* (1802), *Female Foundling* (1802), *The Rural Philosopher* (1802), *Jenny* (1802-04), *Castle Rack Rent* (1804), and *Delaval* (1804).²⁶ With the exceptions of *Castle Rack Rent* and *Delaval*, all the novels were translated from the French by Martin.

At some point in his publishing career, Martin became interested in the law. Given the fact that much of what he produced as a printer was law related, he could not help but become familiar with much of it. Perhaps, like his yet to be born countryman, de Tocqueville, Martin recognized that lawyers were America's new aristocracy; he also realized that the practice of law could lead to great wealth. For if there is one characteristic that all who have written about Martin stress, it is that he worked hard to accumulate wealth and begrudgingly spent it.²⁷ Even his most sympathetic biographer, his colleague on the Louisiana Supreme Court, Judge Bullard, stated in his memorial to Martin, "The long and painful struggle of Judge Martin in his youth against poverty, exerted a great influence upon his habits and turn of mind through life. The accumulation of wealth by

22. See, e.g., sec. III of the accompanying bibliography, *infra*.

23. In William K. Boyd's introduction to a reprint of the *Independent Citizen*, he suggests that the author of the work may be Archibald Maclaine, a lawyer who often represented Loyalist interests. The statutes in question were enacted to prevent those Loyalists whose lands had been confiscated by the government from suing to recover in jury trials. Boyd, *Introduction to THE INDEPENDENT CITIZEN*, in *SOME EIGHTEENTH CENTURY TRACTS CONCERNING NORTH CAROLINA* 455 (W. Boyd ed. 1927).

24. Charles Dickens's problems with American publishers and international copyright are well documented. See 7 *ENCYCLOPAEDIA BRITANNICA* 378, 381 (1965).

25. Tinker, *supra* note 13, at 677.

26. For complete citations to all Martin publications hereinafter cited, see attached bibliography.

27. See, e.g., C. GAYARRÉ, *FERNANDO DE LEMOS: TRUTH AND FICTION: A NOVEL* 247 (1872).

constant economy became habitual with him, at the same time, that he was scrupulously honest and fair in all his dealings."²⁸

Whether Martin's greed led to his decision to practice law is uncertain. He was able, however, to turn his study into a profitable enterprise. Martin taught himself the law by writing and publishing treatises on North Carolina law. These treatises were little more than practical handbooks of the law of the day, which set out black letter law and borrowed heavily from the work of others. His first treatise, *The Office and Authority of a Justice of the Peace, and of Sheriffs, Coroner's, etc.: According to the Laws of the State of North Carolina* (1791), patterns itself on several Justice of the Peace handbooks in existence at the time,²⁹ particularly James Davis's *Justice of the Peace* (Newbern 1749).³⁰ His *Treatise on the Patterns and Duties of Executors and Administrators: According to the Law of North Carolina* (1803) is a blatant plagiarism of Samuel Toller's *The Law of Executors and Administrators* (1st American ed. Philadelphia: 1803). Martin, writing in the third person in the preface to his *Executors and Administrators*, states: "Distrusting himself too much to believe that a work entirely his own could satisfy his Fellow Citizens, he has taken as the ground-work of the Treatise, which he now offers, the latest and most approved publication on this subject, that of Mr. Toller."³¹

Since Martin did not have to worry about copyright, he could rely fairly heavily on Toller's "ground-work."³² Yet Martin's piracy was

28. H. BULLARD, *supra* note 11, at 30.

29. This was a common practice in the eighteenth and nineteenth centuries. Most American justice of the peace treatises borrowed freely from Burns and others. See R. BURNS, *THE JUSTICE OF THE PEACE AND PARISH OFFICERS* (15th ed. London 1785); CONDUCTOR GENERALIS; OR A GUIDE FOR JUSTICES OF THE PEACE, AND CORONERS, CONSTABLES, JURYMEN, OVERSEERS OF THE POOR, SURVEYORS OF HIGHWAYS, GOVERNORS OF FAIRS, GAOLERS (New York 1711) (Philadelphia 1722); G. WEBB, *THE OFFICE AND AUTHORITY OF A JUSTICE OF PEACE; AND ALSO THE DUTY OF SHERIFFS, CORONERS, CHURCHWARDENS, SURVEIORS OF HIGHWAYS, CONSTABLES, AND OFFICERS OF MILITIA* (Williamsburg 1736); W. SIMPSON, *THE PRACTICAL JUSTICE OF THE PEACE AND PARISH OFFICER OF HIS MAJESTY'S PROVINCE OF SOUTH CAROLINA* (Charlestown 1761); R. STARKE, *THE OFFICE AND AUTHORITY OF A JUSTICE OF THE PEACE* (Williamsburg 1774).

30. In these sheets, he has endeavored to digest, under alphabetical heads, the duty and authority of a Justice of the Peace, he compiled from the Common Law and Statistics of England, the acts of the Legislature of this State, and Burn's, Nelson's, Dalton's, Parker's and Davis's Justices and the authorities quoted in those books. The last gentleman's performance, being the most analogous to the practice of this country, has been closely attended to; and the present work should not have been substituted to a second edition of it, had not many alterations it required, precluded the idea of introducing it under Mr. Davis's name.

F. MARTIN, *THE OFFICE AND AUTHORITY OF A JUSTICE OF THE PEACE, AND OF SHERIFFS, CORONER'S, ETC.: ACCORDING TO THE LAWS OF THE STATE OF NORTH CAROLINA* [2-3] (1791).

31. F. MARTIN, *A TREATISE ON THE POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS: ACCORDING TO THE LAW OF NORTH CAROLINA* at v (1803).

32. While there is no modern record of Martin's publishing a reprint, in an ad placed at the back of his statutory compilation, *The Public Acts of the General Assembly of North Carolina: Volume II Containing the Acts from 1790 to 1803; Revised and Published Under the Authority of the Legislature*

important to the development of the law in the young state of North Carolina. Books of law were scarce, importing them was expensive, and the general public did not favor the blanket adoption of any English law to the young country. American adaptations were much more palatable to the citizens of the new republic and obviated the need for the development of a whole new corpus of law. The adaptations were the fertile soil from which a new body of law would grow.³³

Martin also published a number of statutory compilations, the most notable of which are *A Collection of the Statutes of the Parliament of England in Force in the State of North Carolina (1792)* and *The Public Acts of the General Assembly of North Carolina (1804)*.³⁴ The first collection was not well thought of by many of his contemporaries. In their preface to the *Revised Statutes of the State of North Carolina*, the editors state:

In the year 1792, Francois-Xavier Martin, in obedience to a resolution of the General Assembly of the preceding year, published a 'Collection of the statutes of the Parliament of England in force in the State of North Carolina;' of which work it may only be remarked, that it was utterly unworthy of the talents and industry of the distinguished compiler, omitting many important statutes, always in force, and inserting many others, which never were, and never could have been in force, either in the Province, or in the State.³⁵

This may be true, but in all fairness to Martin, it is probable that he did not have the resources to determine which English statutes were in force or

by Francois Xavier Martin [245] (1804), there is a notice for books printed and for sale at his office. It contains entries for both *Martin's on Executor and Toller on Executors*. It may be the same book since they are both listed as being of the same dimensions. Unfortunately, no dates of publication are listed, nor is a publisher listed.

33. It so frequently occurs that Persons find themselves interested in the Management of the Estates of the deceased, either as Executors, Administrators, Creditors, Legatees or next of kin, that a knowledge of that Branch of Jurisprudence, which relates to such Estates, is of daily and important use: Yet, it is extremely difficult to procure the Books from which Satisfaction in this Respect is to be obtained. They are voluminous; and so much so, that they are seldom found together, even in the best law Libraries: And when they can be collected, much Time and Labor must be wasted, before anyone can become Master of the Point on which Information is required.

These Considerations have long ago induced the Writer of the following Treatise to believe, and to express the Opinion, that a Small Digest containing the leading Principles of the Law on this Subject, would be found of uncommon Utility, if it came from the hands of a Person, whose Abilities and Industry could command the Confidence of the Public. The Undertaking was worth the attention of such a Person, and he had hoped would soon engage it. In this expectation, however, he has been disappointed.

He now presumes to make the attempt.

Id. at [iii]-iv (Martin, speaking of himself in the third person).

34. See the bibliography, *infra*, for a complete listing of the statutory materials Martin published. It is difficult to ascertain exactly what Martin published separately and what he published in sets since his ongoing publication of session laws was often issued as an appendix to existing sets. These appendices were then added to later printings.

35. REVISED STATUTES OF THE STATE OF NORTH CAROLINA, *supra* note 15, at xii.

had been adopted or rejected by the colonial assemblies. In his preface to *Statutes in Force*, Martin states:

I have prepared this Collection and now usher it into light, with all the diffidence that is much heightened by the reflection that, notwithstanding it would have been my wish to have devoted my whole time to the undertaking from the moment I embarked in it, my attention has been frequently diverted by unavoidable occupations. However, I indulge the idea that whatever errors may be discovered will be found to be on the right side. Although I have, perhaps, suffered a few statutes to creep in, which might have been suppressed, I have omitted to insert none that were material.

To have been furnished with a clue to direct me through the vast daedalus of laws from which this collection is extracted, would have much eased my labor, and inspired me with some degree of confidence. Finding that no act of Assembly afforded it, and that many, even among the most respectable, professors of the law disagree in regard to the application of a number of British statutes, I have adopted and prosecuted a plan, that appeared to render the utility of the work least dependent on my own judgement, which, unmatured by age and unsupported by experience, could not be deemed a criterion.³⁶

A number of case reports, the first in the state, also were published by Martin. Not suprisingly, the first set of reports he published were English reports rather than American, a reprint of *Latch's Reports* (1661), which Martin translated into English from the Norman French.³⁷ A reprint of this sort was desirable for a number of reasons. First, it could be printed and sold for less money than a volume printed in England. Second, Martin could offer a volume translated into English from the Norman French—a language which many American lawyers could not read. Third, it was a proven product, so he could be reasonably sure of a market. Finally, the book was out of copyright, although in reality this may not have been a concern.³⁸ His first compilation of American cases is titled *A Few Cases, Determined in the Superior Courts of North Carolina* (1796). In later years this volume was edited and revised to include U.S. Circuit Court cases for North Carolina and a few later Superior Court cases.³⁹ At the time,

36. STATUTES IN FORCE at iii (1792).

37. CASES DETERMINED IN THE COURT OF KING'S BENCH, DURING THE I, II, & III YEARS OF CHARLES I (1793). Martin translated these into English from the Norman-French.

38. Green, *supra* note 19, at 34-35.

39. These volumes, referred to as *Martin I* and *Martin II*, are reproduced in the first volume of the *North Carolina Supreme Court Reports*. Martin was counsel in a large number of the cases; the rest may be cases he witnessed while on circuit.

Martin's Reports was only the sixth set of case reports printed in the United States.⁴⁰

One of Martin's most significant publishing accomplishments in North Carolina, and the one most often praised, was his translation and publication of the first English edition of Pothier's *Obligations*.⁴¹ According to legend, he accomplished this while sitting with an open copy of Pothier in front of him and setting the type as he translated the work into English.⁴² He also printed Evans's *Essays on the Action for Money* (1802).⁴³

While scholars generally have praised his translation of Pothier and criticized his legal handbooks and other legal works, they have failed to recognize the real worth of treatises such as *Justice of the Peace*. While such treatises have limited worth for their discussions of the law, they have enormous value as artifacts of legal history. These small practice volumes give a real insight into everyday life and the practice of law in the early days of North Carolina statehood. When one compares this work with those from other states during this time period, regional differences in the law emerge (such as the importance, in North Carolina, of religion and of the slave trade to the agricultural economy). These *vade mecum*, handbooks carried for ready reference, made small to fit comfortably in a saddlebag, were often all that lawyers had as they followed the judges on circuit. These handbooks were arranged by subject, in alphabetical order, with emphasis on those matters of specific concern to the justice of the peace—crime, morality, and real and personal property rights. A typical entry—"Bastard," for instance—would be defined. Elements of the definition would then be expanded to include certain fact situations. If applicable statutes, cases, or, in many instances, treatises existed, they were cited as authority for these pronouncements. Needed forms were supplied: under the subject "Bastard," for example, were included warrants for the apprehension of the single woman, for an examination of the woman, for the apprehension of the reputed father, and several other contingencies.⁴⁴

With law books so scarce, the handbooks, with their generalization and oversimplification of the law, became what most late eighteenth and early nineteenth century Americans knew as law. They were, in a very real sense, America's first restatements of the common law. There was little else to

40. The others were *Kirby's Reports* (Conn. 1789), *Hopkinson's Admiralty Reports* (Pa. 1789), *Dallas' Reports* (Pa. 1790), *Chipman's Reports* (Vt. 1793) and *Wythe's Reports* (Va. 1795).

41. R. POTHIER, *TRAITE DE OBLIGATIONS* (Nouvelle ed. Paris 1768).

42. W. HOWE, *supra* note 14, at 348-49.

43. W. EVANS, *ESSAYS ON THE ACTION FOR MONEY, ON THE LAW OF INSURANCES, AND THE LAW OF BILLS OF EXCHANGE AND PROMISSORY NOTES* (1st English ed. Liverpool 1802).

44. *JUSTICE OF THE PEACE* 41-48 (new ed. 1804).

guide those who sought answers to their legal problems.⁴⁵ The beauty of these *vade mecum* lay in their simplicity. They helped establish some sort of uniform law over vast areas of sparsely populated territories and states. They helped establish business and social customs. There was no need for the complicated pleadings of England; few lawyers could understand them. Most lawyers owned at most a handful of books. Even the wealthiest of American lawyers had little in the way of a law library.

"The outstanding colonial library of the middle of the Eighteenth Century, that of William Byrd, the younger, in Virginia contained only 350 volumes of law and statutes out of a total of 3,625."⁴⁶ The *vade mecum* gave the young republic a simple common law that all Americans could understand.

Without the benefit of the great libraries of England, and financially incapable of buying the few law books that did exist in the United States, American lawyers were forced to sculpt a unique brand of law, with its base in the English common law and its shape in the needs of a young America whose culture and commerce were just awakening. The difficulties of obtaining law books and a healthy skepticism of anything British resulted in a reliance on regional custom as well as the few law books that could be consulted. Common sense and experience were the lawyer's library. Justices of the peace and many judges had no legal training; they were chosen because of their good sense and standing in the community. If case law or statute flew in the face of reason, they were apt to ignore it and rule as they saw just. Martin, and those like him, created an American common law, perhaps more than the Kents and Storys of American jurisprudence did.

Martin read for the law in the office of a respected North Carolina attorney, Abner Nash,⁴⁷ and was called to the bar in 1789. As Martin's legal business improved, he devoted less and less of his energies to his printing concern. If Martin's *Notes of North Carolina Superior Court Decisions* (where he is listed as counsel in a large number of those decisions) is any indication, by the mid-1790s his law practice was flourishing. He was sufficiently well established in 1796 to take on the

45. In the preface to his *JUSTICE OF THE PEACE* (1791) Martin states, "Magistrates . . . injure their neighbor through ignorance." He hoped his treatise would provide "a cue to direct them through the maze of intricacies into which the laws of the state have been thrown, by the political vicissitudes that sprang from the two revolutions, which the present generation has witnessed." F. MARTIN, *JUSTICE OF THE PEACE* [2] (1791).

46. R. MORRIS, *STUDIES IN THE HISTORY OF AMERICAN LAW: WITH SPECIAL REFERENCE TO THE SEVENTEENTH AND EIGHTEENTH CENTURIES* 44-45 (3d ed. 1959). For an excellent glimpse of law library holdings at the turn of the nineteenth century, see also H. JOHNSON, *IMPORTED EIGHTEENTH-CENTURY LAW TREATISES IN AMERICAN LIBRARIES 1700-1799* (1978).

47. Abner Nash would become a Governor of North Carolina and was one of the leading lawyers of his day. See Nash, *Governor Abner Nash*, 22 N.C. BOOKLET 3 (1922-23).

education of a law clerk, William Gaston, who would have a long and successful career as a lawyer, state legislator, member of the U.S. House of Representatives, and Associate Justice of the North Carolina Supreme Court.⁴⁸ As early as 1793 Martin was advertising for an apprentice for his printing shop.⁴⁹ Sometime around 1802 Martin took on a partner in his printing shop and formed the firm of Martin & Ogden.

It was at this point in his printing career that Martin attempted what may have been the first effort to construct a digested index to all reported cases in the United States. In a broadside dated November 15, 1803, entitled "Proposals for Printing by Subscription A Digested Index of American Reports" he gave notice of his intention to attempt such an endeavor. While the broadside lists several subscribers—mainly booksellers and North Carolina attorneys—the project apparently died. Since this was during a time when Martin's legal and public career was blossoming, he may have lacked the time to attempt the digest or may have seen his time more profitably spent in other pursuits.

While Martin's proposal hardly can be called visionary (in the broadside he mentions that "[t]he work is executed on the plan of the *Digested Index to the Chancery Reports*, lately published in England"), it does show that he possessed the practical mind of a scholar. He saw the need for comparative jurisprudence.

Sprung from the same stock, speaking the same language, occupying the same division of the western hemisphere, united under one Federal Government, having the same political and commercial relations with the other nations of the earth, the inhabitants of these States cannot differ much in their municipal laws and customs. In reality the common law of England is in every State the basis of its jurisprudence, varied in a few instances only by some legislative improvements, which necessity has required or convenience suggested. Every where wants nearly similar have produced similar emendations.

Hence the decisions of the courts in the several States cannot fail to be interesting to those, generally, who may have the wish and the leisure to examine and compare them, and to the jurist, particularly, who is called by duty and interest to seek a knowledge of them all.⁵⁰

There is no record of Martin publishing anything after 1804. Two novels, *Delaval* (1804) and the *Rural Philosopher* (1804), listed as "In the Press" by Martin in an advertisement in *Public Acts of the General Assembly*⁵¹ actually were published by the firm of Franklin & Garrow. This

48. J. SCHAUINGER, WILLIAM GASTON, CAROLINIAN 17-19 (1949).

49. North Carolina Gazette, March 23, 1793, at (4), col. 3.

50. F. MARTIN, PROPOSALS FOR PRINTING BY SUBSCRIPTION A DIGESTED INDEX TO THE AMERICAN REPORTS (Nov. 15, 1803) (Broadside). See app. fig. 1.

51. PUBLIC ACTS OF THE GENERAL ASSEMBLY [245] (1804).

seems to indicate that he had sold his printing concern sometime in 1804, probably to devote himself to the full-time practice of law. By 1806 he had raised himself to a sufficient level of local importance to be elected to represent New Bern in the North Carolina State Legislature, where he served one term.

Perhaps the highlight of Martin's years in North Carolina was his meeting with George Washington while the President was visiting North Carolina. In Charles Gayarré's work, *Fernando de Lemos: Truth and Fiction: A Novel* (1872), there is a chapter which deals with the life of Martin. In it the meeting of Washington and Martin is described:

When President Washington visited North Carolina, Martin was on the committee charged with the duty of receiving that great man with appropriate honors. It was one of the circumstances of his life of which he loved to talk. When Washington, whom he had never seen before, showed himself to his admiring eyes in a coach and four, with the majestic bearing which is attributed to kings, and which made that illustrious individual look like the very incarnation of intensified aristocracy, the young Frenchman, who had been dreaming of Cincinnatus with spade and plough, and dirt-stained, hard-fisted hands, was rather disconcerted. The committee conducted this Louis the Fourteenth of republicanism to his apartments, but, before entering them, Washington said with a smile to those who reverently surrounded him 'Gentlemen: I am in the habit of attending to the comforts of my horses before thinking of mine. Please therefore to be so kind as to lead me to the stables.' And to the stables the founder of an empire went with a measured and august step, not assumed, but prescribed to him by nature. With placid dignity he patted his horses, and gave the minutest directions to his groom much to the edification of the astonished committee.⁵²

III. Martin in Louisiana

In 1809 Martin was appointed by President Madison to serve as a federal judge for the Territory of Mississippi. He served in Biloxi for less than a year before being transferred to the Territory of Orleans—a post to which he was excellently suited. New Orleans in 1810 was a world of clashing cultures—a strange juxtaposition of frontier town and Old World city. Within the previous ten years, this center of the new American territory had been under the flag of both the Spanish and the French. On its streets walked dispossessed noblemen, frontiersmen, traders, criminals,

52. C. GAYARRÉ, *FERNANDO DE LEMOS: TRUTH AND FICTION: A NOVEL* 245-46 (1872). How much of the account is truth and how much is fiction is not known. Gayarré was by profession a historian, and other historians have treated this account as accurate. See, e.g., Tinker, *supra* note 13, at 677-78. Gayarré, *Essai historique sur la Louisiane*, 7 *DICTIONARY OF AMERICAN BIOGRAPHY* 196 (1980). Gayarré was a contemporary of Martin, and since both men lived in New Orleans, it is plausible that he and Martin were acquaintances.

pirates and buccaneers, and every other type of opportunist imaginable. The inhabitants were French, Spanish, Anglo-American, Indian, and slave. Fortunes were to be made and lost in this gateway to the interior. It was a world of danger and intrigue, with constant rumors of invasion, secession, pirate raids, Indian uprisings, and pestilence. Martin, a French- and English-speaking entrepreneur who was not afraid of hard work, could not help but succeed in this environment.

His European and American educations uniquely qualified him to deal with the conflicting laws and cultures he found in New Orleans. He understood both the common and civil law—and the people who formed them. His classical European education, which included Latin and Italian,⁵³ helped him unravel the threads of Spanish and Roman law that had their place in the Territory's jurisprudence. His deliberate, logical scholarship enabled him to forge a unified system of law from the conflicting codes and statutes that were, or had been, in effect during the short history of the new territory.

When Martin arrived in Louisiana, the main source of law was the 1808 *Digest of the Civil Laws*, commonly called the "Old Code." It was merely a composite of the Napoleonic Code and various local laws. It did not, however, abrogate all previous law but merely repealed those laws repugnant to it. In effect, this left the courts to contend with Roman Law and the codes of Spain.⁵⁴ Because of his many years on the bench, it would fall upon Martin's shoulders, more than anyone else's, to deal with the basic conflict of common and civil law and to mold a unified system of law for the territory. For this reason, he is often referred to as the "Father of Louisiana Jurisprudence."

With the admission of Louisiana to the Union and the abolition of the Territorial Courts, Martin's short career as a federal judge came to an end. During that time, he became involved in a case that eventually would make him the laughing stock of New Orleans. The petitioner, Henri Denis, a lawyer, and the respondent, Jean LeClerc, a newspaper publisher and editor, both loved the same young widow. When she gave LeClerc one of Denis's love letters, Denis was forced to action. Fearful that LeClerc, who had previously used his newspaper to attack Denis, might publish the letter, Denis petitioned Judge Martin to issue an injunction to prevent LeClerc from either publishing or reading aloud the letter, since the letter was either stolen or found by LeClerc. In his defense, LeClerc offered a letter he had

53. H. BULLARD, *supra* note 11, at 10-11.

54. See generally Brown, *Legal Systems in Conflict: Orleans Territory 1804-1812*, 1 AM. J. LEG. HIST. 35 (1951). For a more complete examination of Martin's role on the court and in the development of Louisiana jurisprudence, see generally Fischer, *The Louisiana Supreme Court, 1812-1846: Strangers in a Strange Land*, TUL. CIV. L. F., vol. 1, no. 4, 1973, at 1.

received from the widow in which she mentioned enclosing the love letter in question for LeClerc to see. Much to LeClerc's surprise, Judge Martin refused to dismiss the injunction.⁵⁵

LeClerc then turned his newspaper's attention to the unsuspecting judge. In a thinly disguised attack on Martin, LeClerc wrote an account of "his honor Cadi Martin," whom he described as

"[D]ull of face, tottering of gait, stupid of expression, uncouth in dress; everything about him, if judged only by appearance, would cause him to be mistaken in any great European city for a seller of rabbit skins or a dealer in old clothes." With an impish delight [LeClerc] told of the lady who had asked who [Martin] was as he passed on the street and when told that he was a judge of the Superior Court had said, "It's a brute; ah! the sad wretch! Nature meant him for an executioner, by foolish fate made him a judge."⁵⁶

A second article made the now celebrated love letter available for inspection at LeClerc's printing office. While LeClerc argued that this was not covered by Martin's injunction, it gave Martin the grounds he needed to find LeClerc in contempt of court and to sentence him to ten days in jail and a \$100 fine. LeClerc returned the volley as best he knew how. While still in jail, he asked an actor friend, Monsieur Daudet, to perform *The Judgement of Midas*. The whole city soon realized the play was yet another attack on Martin, a notorious miser. Monsieur Daudet appeared as King Midas and

pointed his remarks, as Judge Martin did, with a pair of spectacles in his hand and as he assumed each well known mannerism, titters went up all over the house When King Midas disclosed the fact that he had grown the long ears of an ass, the audience roared, and shouts went up everywhere, "It's Martin! It's Martin! The Judge!"⁵⁷

From his prison cell LeClerc triumphed.

On February 19, 1813, Martin was appointed the first Attorney General of the new state. Upon the resignation of State Supreme Court Judge Hall in 1815 to accept the position of U.S. District Court Judge, Martin was appointed to take Hall's place. This was to be the beginning of thirty-one productive years on the bench.⁵⁸ While on the bench, Martin wrote and published less frequently, but did not stop these activities altogether.

When Martin arrived in Louisiana, his financial situation had improved to the point where his estimated worth was \$100,000.⁵⁹ It would seem that a

55. Tinker, *supra* note 13, at 682-88.

56. *Id.* at 686.

57. *Id.* at 688.

58. H. BULLARD, *supra* note 11, at 13.

59. W. SPARKS, *THE MEMORIES OF FIFTY YEARS: CONTAINING BRIEF BIOGRAPHICAL NOTICES OF DISTINGUISHED AMERICANS, AND ANECDOTES OF REMARKABLE MEN; INTERSPERSED WITH SCENES AND INCIDENTS OCCURRING DURING A LONG LIFE OF OBSERVATION CHIEFLY SPENT IN THE SOUTHWEST* 409 (1870).

sum of that size combined with the income of his judgeship (\$2,000 salary plus \$667 in expenses annually)⁶⁰ would obviate any need to wear so many hats to make a living—yet greed apparently egged him on.⁶¹ Seeing a golden opportunity, he began publishing reports of the territorial court. Two volumes of decisions of the Territorial Superior Court were printed, the first in 1811 and the second in 1813 (see bibliography under “1811”). This practice would continue during his tenure on the Supreme Court. He would publish eighteen volumes of decisions of that body. They supplemented his income and provided a framework of decisions upon which Louisiana jurisprudence could be based. Each volume contained a different quote from antiquity regarding the law, such as Cicero’s defense of Sulla: “Status enim reipublicae maximae iudicatis rebus continetur.”⁶²

In 1816, Martin published a digest of the acts of the legislatures of the Territory and the State, commonly referred to as *Martin’s Digest*.⁶³ For years it remained an important source of the law of Louisiana.

While in Louisiana, Martin also published two histories, *The History of North Carolina* (1829) and *The History of Louisiana* (1827-29), a two-volume revisal of an earlier history. His *History of North Carolina* has been criticized for being sloppy, incomplete, and fabricated to suit his fancy. Stephen B. Weeks, editor of *The Colonial and State Records of North Carolina* and a historian without equal in his knowledge of early North Carolina history, stated, “A comparison of his account of the body [the Legislature] with their records will show what poor use he put the materials that he received. In fact, they clearly show that he either could not, or would not, tell the truth when he had it before his eyes.”⁶⁴

Martin’s *History of Louisiana* was more favorably received, although it was considered “hard, cold, unadorned facts, exposed with an aridity that would have put to shame the Great Sahara.”⁶⁵

His good friend and colleague, Judge Bullard, could only say, “The

60. Letter from Francois-Xavier Martin to John Hamilton (Mar. 22, 1811), reprinted in 2 PLANTATION AND FRONTIER DOCUMENTS 197, 200 (U.S. Phillips ed. 1909).

61. Martin was also part-owner of a brick factory. “In Lousiana, where he afterwards moved, he combined the occupation of Judge, brickyard manager, mail contractor, and publisher. It is said that on settling up his accounts, it was found that the personal expenses of his whole family—children, it is true, he had none—had not reached twenty-five cents per diem.” Obituary, 6 PA. L. J. 157, 158 (1847).

62. “The welfare of the state depends greatly upon respect for settled decisions.” Dart, *The History of the Supreme Court of Louisiana*, in THE CELEBRATION OF THE CENTENARY OF THE SUPREME COURT OF LOUISIANA, in 133 LA. xxv, xxxiv (1913). This series of articles also was published as a pamphlet that same year.

63. The text is in both English and French, with the English version on the verso of each page and the French on the recto. The alphabetic subject format of the three-volume set is similar to the modern-day legal encyclopedia.

64. Weeks, *Historical Review*, in 30 COLONIAL AND STATE RECORDS OF NORTH CAROLINA 15 (S. Weeks ed. 1914).

65. Tinker, *supra* note 13, at 690.

subject is one full of romantic interest, and though not treated by our author in the most attractive form, yet the work is always referred to with entire confidence in the historical accuracy of its statements and of the events which it records."⁶⁶

While his personal habits may have been the subject of much ridicule, and much of what he published was of questionable worth, few would disagree that he was the quintessential judge. He was known as a fair and objective jurist, a scholar who always thoroughly analyzed and researched the cases before him. His deductive and reasoning powers were unparalleled, and he was compared to the great English judge, Mansfield. A contemporary of Martin wrote in his autobiography, "He was without prejudice, and only knew men before his court as parties litigant. It was said of him, by John R. Grymes, a distinguished lawyer of New Orleans, that he was better fitted by nature for a judge than any man who every graced the Bench, 'He was all head, and no heart.'"⁶⁷

By 1836, Judge Martin, whose eyesight was never good, was almost totally blind. He was forced to dictate his decisions to a clerk and could sign the decision only if his hand was placed at the appropriate part of the page. In 1844 he made his first visit back to his boyhood home in France to visit with his family and consult a leading French oculist. It was the doctor's opinion that his condition was inoperable. After a short stay, he returned to Louisiana to resume his duties on the court.⁶⁸

In March of 1846, as a result of the adoption of a new state constitution that reorganized the court system and abolished the Supreme Court as it previously stood, Martin was forced to step down from the bench. Though he had been totally blind for over ten years, he had performed his duties as Chief Judge admirably. His decisions earned him the respect not only of the people of Louisiana but also of those learned in the law throughout the United States. He was awarded honorary doctorates in law at Harvard and the University of Nashville.

On December 10, 1846, Judge Martin died.⁶⁹ It was generally believed that without his work he had nothing to live for, and so it was not surprising that he should die shortly after he stepped down from the Court.

He was followed to the grave by the entire Bench and Bar, and most of the distinguished people of his adopted city. But I doubt if a tear was

66. H. BULLARD, *supra* note 11, at 19.

67. W. SPARKS, *supra* note 59, at 410.

68. H. BULLARD, *supra* note 11, at 29-30.

69. Martin's death did not end his influence on Louisiana jurisprudence. Litigation arose over a handwritten will he had written without witnesses while he was blind. The validity of the will was called into question by the Attorney General of Louisiana. The Supreme Court eventually ruled the will valid. For an excellent treatment of the whole controversy, see Billings, *A Judicial Legacy: The Last Will and Testament of Francois Xavier Martin*, 25 LA. HIST. 277 (1984).

shed at his funeral. He was without ties in life which, sundered by death, wring tears and grief from the living who loved and who have lost an endeared one.

All that the head could give, he had—the heart denied him all: in life he had given it to no one, and his death had touched no heart; and no tear embalmed his bier, no flower planted by affection's hand blooms about his grave. Still he had left an imperishable monument to his fame in his judicial career.⁷⁰

Because Martin was such a private man, most of what we know of him is through the anecdotes of a few contemporaries during his days in Louisiana. He never married—his detractors claimed him incapable of such an extravagance. If he wrote personal papers or memoirs, other than a few letters, none survive.⁷¹ His life-style and nearsighted appearance made him an easy target for his tormentors—more caricature than real person. What emerges at first glance is the picture of a solitary miser whose only love was the law. A deeper look, however, reveals his singular dedication to the law, a dedication which enabled him to influence the development of the law as few others had.

He began his legal studies the year before the adoption of the Constitution, a time when the type of law and government that would rule America was unsettled. By the end of his career, a well-defined corpus of American jurisprudence, unlike anything the world had ever seen, had emerged. Martin was one of those who helped give it substance. Through his decisions, treatises, and other legal publishing he had a profound effect on the jurisprudence of two states.

In North Carolina, his works formed part of the very foundation of the common law of the state. In Louisiana, his reports and decisions helped guide the state's judiciary through the murky waters of the various codes still in effect. Martin recognized that his *Louisiana Reports* would not have the precedential value they would have in a common law state, such as North Carolina, but he hoped that they would still be of some use. Judges could use the decisions to help guide them and "a knowledge of the decisions of the court will tend to the introduction of more order and regularity in practice and uniformity of decisions."⁷² He established the

70. W. SPARKS, *supra* note 59, at 413.

71. Concerning his personal papers, Judge Martin stated in 1829, "In their circuitous way from Newbern to New York and New Orleans, the sea water found its way to them; since their arrival, the mice, worms, and the variety of insects of a humid and warm climate, have made great ravages among them. The ink of several very ancient documents has grown so pale as to render them nearly illegible, and notes hastily taken on a journey are in so cramped a hand that they can not be deciphered by any person but him who made." Weeks, *supra* note 64, at 71. This explains the lack of documentation from his North Carolina years. Martin's heir and executor, Paul Martin, may have taken or sent his brother's papers back to France.

72. 1 MART. i, iv (La. 1811).

keeping of a published record of the decisions of both states, and in doing so preserved a record of a period of legal development which otherwise might have been lost.

Appendix

An Annotated Bibliography of Works by or about Francois Xavier Martin

Introduction and Methodology

As a result of Martin's long public service, there are scores of references to him in various public and private documents. Part I of this bibliography includes only those publications which devote substantial attention to Martin or shed significant light on his life. A number of other biographical references can be found in the footnotes of the accompanying article.

In Section II of this bibliography, I have been as exhaustive as possible in the selection of materials printed, written, edited, compiled, or translated by Martin. Those entries or parts of entries that are suspect because of insufficient or nonexistent bibliographic information have been bracketed. I have relied heavily upon two bibliographies in compiling this list: Douglas McMurtrie's *Eighteenth Century North Carolina Imprints: 1749-1800* (Chapel Hill: University of North Carolina Press, 1938) and the bibliography that accompanies Tinker's article, "Jurist and Japer," cited in Section I of this bibliography. I supplemented and verified these bibliographies, where possible, through investigations of the collections of the University of North Carolina, Duke University, and the North Carolina State Library and Archives, and various published catalogs of library holdings such as the *Catalog of the Library of the Harvard Law School* (1909). I also examined the *National Union Catalog* and the OCLC and RLIN data bases, and searched all known copies of Martin's *North Carolina Gazette* for advertisements to his works.

It is hoped that this bibliography will help provide a glimpse into the life and works of one of our country's first law book publishers. Martin recognized that the continued development of the law in his adopted country depended on maintaining and promoting a printed record of all the court decisions and statutes of its many jurisdictions. His varied abilities—those of printer, translator, lawyer, and jurist—uniquely qualified him to provide this needed service for his country.

I. Books, Parts of Books, and Articles about Martin

Billings, Warren M. "A Judicial Legacy: The Last Will and Testament of Francois Xavier Martin." *Louisiana History* 25 (1984): 277-88.

Bullard, Henry A. *A Discourse on the Life and Character of the Hon. Francois Xavier Martin, Late Senior Judge of the Supreme Court, of the State of Louisiana, Pronounced at the Request of the Bar of New Orleans*. New

- Orleans: J. B. Steel, 1847. Bullard, a Harvard graduate, became a member of the Louisiana Supreme Court in 1834 and served until 1846, with a one-year sabbatical in 1839. In 1847 he became a Professor of Civil Law at the University of Louisiana. His discourse was also printed in French and published by de Gaux & Co., New Orleans, 1847. An excerpt of this discourse appears in *Western Law Journal* 4 (1846-7): 308-14.
- Butler, Pierre. "Francois Xavier Martin: Historian and Jurist." *The Green Bag* 18 (1906): 261-68. This retelling of the life of Martin is based primarily on the biographies by Bullard, Howe, and Gayarré.
- Fischer, Robert B., Jr. "The Louisiana Supreme Court, 1812-1846: Strangers in a Strange Land." *Tulane Civil Law Forum*, vol. 1, no. 4 (1973): 1-42. A good study of Martin's influence on the court, and the court's influence on the development of Louisiana jurisprudence.
- Gayarré, Charles. "The Old Chief Justice and His Black Servant, Tom." In *Fernando De Lemos: Truth and Fiction: A Novel*, 243-56. New York: G. W. Carleton and Co., 1872. Gayarré, a historian and contemporary of Martin, paints an uncomplimentary portrait of Martin in this chapter of his novel. Succeeding biographers have treated this account as accurate, but Gayarré may have taken significant literary license.
- Higginbotham, R. Don. "Francois-Xavier Martin's *History of North Carolina*." In *The Colonial Legacy, Vol. IV, Early Nationalist Historians*, edited by Lawrence H. Leder, 265-81. New York: Harper & Row, 1973. A good critical review of Martin's *History*. Higginbotham also provides the standard biographical information repeated in other articles about Martin. Higginbotham acknowledges Martin's "uninspired prose" and "lack of careful proofreading" but praises the book's objective discussion of history—a rare trait in early nineteenth century histories.
- Howe, William W. "Francois Xavier Martin: 1762-1846." In *Great American Lawyers*, edited by William D. Lewis, vol. 2, 411-52. Philadelphia: John C. Winston Co., 1907. One of three accounts of Martin by Howe, varying only slightly in content and style. Howe was a well-known lawyer and leader of the Louisiana bar. See next two entries.
- . "Louisiana and Judge Martin." Lecture XXI in *Studies in the Civil Law and its Relations to the Jurisprudence of England and America*, 346-71. 2d ed. Boston: Little, Brown, 1905.
- . "Mémorial of Francois-Xavier Martin. In *History of Louisiana, from the Earliest Period*, by F. X. Martin, vii-xxxviii. New Orleans: Gresham, 1882.
- Nicholls, James C. "Mme. Riccoboni in North Carolina." *Revue de Littérature Comparée* 41 (1967): [285]-288. A short description of Martin's translations of Mme. Riccoboni's novels.

- "Review of *The History of Louisiana, From the Earliest Period*," by Francois Xavier Martin. *American Quarterly Review* 9 (1831): 186-232. A generally favorable review that quotes long passages of Martin's work—in effect, an abridgement.
- Thompson, Holland M. "Francois Xavier Martin." *University of North Carolina Magazine* 12 (1893): 203-09. A short sketch that sheds no new light on the life of Martin.
- Tinker, Edward L. "Jurist and Japer: Francois Xavier Martin and Jean LeClerc: With a List of Their Publications in this Library and Elsewhere." *Bulletin of the New York Public Library* 39 (1935): 675-97. Written in a style reminiscent of a Dickens novel, this is perhaps the most complete account of the life of Martin. It contains an excellent bibliography that gives some locations of copies of Martin's works.
- Weeks, Stephen B. "Francois-Xavier Martin." In *Biographical History of North Carolina: From Colonial Times to the Present*, edited by Samuel Ashe, vol. 4, 306-14. Greensboro: C.L. Van Noppen, 1906. A critical biography by a leading North Carolina historian. He attacks much of what Martin did in North Carolina as shoddy and incomplete.
- Yearn, W. B. "Francois X. Martin and His History of North Carolina." Review of *The History of North Carolina, From the Earliest Period*, by F. X. Martin. *North Carolina Historical Review* 36 (1959): 17-27. A generally unfavorable review of Martin's *History*.

II. Chronological Compilations of Materials Written, Printed, Edited, Translated or Compiled by Martin

1785

The North Carolina Gazette, 1785-1798. This was a weekly newspaper. One issue for 1785 has been located under the name *The North Carolina Gazette or Newbern Advertiser* printed by Martin and Co.; Martin apparently bought or took over R. Keith's *The North Carolina Gazette*. For at least a short time in 1787, the paper was called *Martin's North Carolina Gazette*; by 1790 it was simply *The North Carolina Gazette*. The last known issue is Feb. 24, 1798. All known existing copies of the paper were microfilmed by the North Carolina Department of Archives in 1961.

1787

[Maclaine, Archibald.] *The Independent Citizen, or, The Majesty of the People Asserted Against the Usurpations of the North Carolina in Several Acts and Assembly, Passed in the Years 1783, 1785, 1786, and 1787*. (New Bern: F. X. Martin, 1787). Reprinted in *Some Eighteenth Century Tracts*

Concerning North Carolina: With Introduction and Notes, edited by William K. Boyd. Raleigh: North Carolina Historical Association, 1927. A pamphlet attacking the legislature's attempt to limit trial by jury. Originally published in four parts in the *North Carolina Gazette*, dates unknown. In Boyd's introduction to its reprint, he suggests that the style of the work is similar to Archibald Maclaine's, a staunch defender of former Loyalists.

1789

Martin, Francois-Xavier. *A Funeral Oration on the Most Worshipful and Honorable Major-General Richard Caswell, Grand-Master of the Masons of N. Carolina, Delivered in Christ-Church, Before St. John's Lodge, No. 2, Newbern, On Sunday, the 29th of November, 1789* [sic]. Newbern: Printed at the Expense of the Lodge, 1789 [sic]. Martin was a member of the Newbern Masonic Lodge.

1790

(Martin, Francois-Xavier.) *Extract From a Discourse Delivered Before St. John's Lodge, No. 2, of Newbern, on the Festival of St. John the Baptist, June 24, 1789*. Philadelphia: Mathew Carey, 1790. McMurtrie suggests that Solomon Halling may have been the author, and that Martin merely published this first, in 1789.

[*The North Carolina Almanack for 1791*. Newbern: Francois Xavier Martin, 1790 or 1791?] Mentioned as for sale in *North Carolina Gazette*, July 2, 1791, at 4, col. 3.

1791

Martin, Francois-Xavier. *The Office and Authority of a Justice of the Peace, and of Sheriffs, Coroners, According to the Laws of the State of North Carolina*. New Bern: Francois Xavier Martin, 1791. In the *North Carolina Gazette*, Aug. 1, 1787, at 4, col. 2, there is a notice of "Proposals for Printing by Subscription, a New Edition of the Office and Authority of a Justice of the Peace," a reference to James Davis's work.

Conditions,

I. The Book to be printed on good paper and neatly bound in law binding.

II. The Book to be put in the press as soon as a sufficient number of publications will appear, to defray the expenses, and to be continued with all possible dispatch.

III. The terms of subscription to be TWENTY-FIVE SHILLINGS for each copy. Ten Shillings to be paid on subscribing, and the remainder on the delivery of the Book.

IV. The names of those Gentlemen who, patronize the undertaking by their subscription shall be printed at the head of the book, unless the contrary is requested.

Subscriptions are taken in at my office and at Messieurs [sic] Hodge and Blanchard's in Newbern, and by Gentlemen who distribute my papers, in the other towns of this state.

Martin.

It was 30 shillings for those who did not subscribe. *North Carolina Gazette*, June 4, 1791 at 1, col. 3.

[*The North Carolina Almanack for 1792*. Newbern: Francois Xavier Martin, 1791.]

Mentioned as for sale in *North Carolina Gazette*, Sept. 24, 1791 at 3, col. 1.

Winchester, Elhaman. *The Face of Moses Unveiled By the Gospel, or Evangelical Truths Discovered in the Law*. [Newbern: F. X. Martin, 1791.]. Advertised in the *Gazette*, June 4, 1791 at 1, col. 3. Price: two shillings and six pence.

1792

Martin, Francois Xavier, ed. *A Collection of the Statutes of the Parliament of England in Force in the State of North Carolina*. Newbern: From the Editor's Press, 1792. This volume was compiled at the behest of the North Carolina General Assembly. It was one of the few public printings Martin undertook. It has been generally condemned for its incompleteness and errors. It contains a list of subscribers on the last page of the volume.

1793

Martin, Francois-Xavier, trans. *Cases Determined in the Court of King's Bench; During the I, II and III Years of Charles I. Collected by John Latch, of the Middle Temple, Esq. first published, in Norman-French, (1661,) by Edward Walpoole, of Gray's Inn, Esquire*. Newbern: From the Translator's Press, 1793. This was republished in 1797, along with *Notes on a Few Decisions in the Superior Courts of the State of North Carolina*. The last page contains an advertisement of Martin's *Statutes in Force and Justice of the Peace*. There are annotations to Martin's *Collection of Statutes of the Parliament of England in Force*, along with the notes of North Carolina attorney John Dewey. There's also a "Note of the Translator":

A Desire of preventing the waste of a few leisure hours, alone, induced me to undertake the publication of these cases in modern language. Much credit could not be derived from it. I was not stimulated by the prospect of direct benefit: neither did I think myself better qualified, than any other person in the profession.

The appearance of this work, in its new dress, will, I have flattered myself, save some time and labour to gentlemen who can, less conveniently than I, bestow either. To them, it is offered with deference. May they receive it with candor!

LATCH'S REPORTS, as they were not published during his life, suffer much from not having been corrected by the parental hand. The want of the finishing-touch is, in many parts, glaringly conspicuous. This deficiency few publishers presume to correct. I dared not do it.

I translated rather servilely. Elegance of stile, even in my native language, is without my reach. An attempt to it, in another, would have been madness. It was not within my ambition.

I omitted the cases relating to spiritual matters. These are seldom wanted on this side of the Atlantic. The only alteration I permitted myself, in the body of the work, was to separate into distinct paragraphs, the statements of the cases, the arguments and the decisions; and to substitute the use of the first, to that of the third, person.

At the end of most cases, are references, which were not in the old edition. I took them from a manuscript of the late Judge Dewey, of this State, a gentleman of much reading and studiousness, and their ordinary concomitants, learning and accuracy.

In a number of places, reference is made by the page to the Collection of Statutes, I published last year.

After the name of every case, I placed that of the term at which it came before the court. In the old edition, it was to be sought for in the table. With this, I took more liberty than with the rest of the work. I arranged the names of the cases in a manner more strictly alphabetical: and I introduced those of the parties, both in the common and the inversed order.

I substituted an Index entirely new, to the former.

F. X Martin.

Newbern, North Carolina, December 1, 1793.

Spaight, Gov. Richard Dobbs, Esq. "Whereas I Have Been Informed That a Pestilential Fever at Present Prevails in the City of Philadelphia . . . Given Under My Hand and the Great Seal of the State . . . at Newbern, the 28th day of September A.D. 1793." [Newbern: F. X. Martin, 1793]. A Broadside requiring a quarantine on ships from Philadelphia. It also was published in the *North Carolina Gazette*.

1794

North Carolina. General Assembly. House of Commons. *Journal of the House of Commons. State of North Carolina. In the House of Commons. At a General Assembly, Begun and Held at Newbern, on Monday the Seventh Day of July, in the Year of Our Lord One Thousand Seven Hundred and Ninety Four, and of the Independence of the United States of America the Nineteenth: It Being the Second Session of This Assembly.* Newbern: F. X. Martin, 1794. This was published at the request of the General Assembly, although at no time in Martin's career was he the Public Printer.

North Carolina. General Assembly. Senate. *Journal of the Senate. State of North Carolina at a General Assembly, Begun and Held at Newbern, on Monday the Seventh Day of July, in the Year of Our Lord One Thousand Seven Hundred Ninety Four, and of the Independence of the United States of America, the Nineteenth: It Being the Second Session of This Assembly, Convened in Consequence of a Proclamation from His Excellency the Governor.* Newbern: F. X. Martin, 1794. See previous annotation.

North Carolina. General Assembly. *A Collection of the Private Acts of the General Assembly of the State of North Carolina, From the Year 1715, To the Year 1790, Inclusive, now in Force and Use.* Newbern: Francois Xavier Martin, 1794. This volume, along with *The Acts of the General Assembly for 1791, 1792, 1793 and 1794* (1795), was intended to supplement *Iredell's Revisal*. It contains a list of subscribers.

The Acts of the General Assembly, relating to Districts, Counties, Towns, Individuals, &c., under the directions of the Legislature, been [sic] omitted in the publication of the Honorable Mr. Iredell, the want of copies of them was soon felt: and this evil, growing daily more difficult to be cured, was at last remedied.

It was my lot to be made instrumental thereto. I was directed by a Resolve of the General Assembly, to collect all those acts, and to publish such of them as are in force, and were omitted in the Judge's Revisal.

I Have aimed at the fulfilment [sic] of the intentions of the Legislature: and prepared and printed this collection, with all the care and attention I could possibly bestow on the work, without unreasonably neglecting my other indispensable avocations.

F.X. Martin

Newbern, December 12th, 1794.

North Carolina. General Assembly. *Laws of North Carolina. At the General Assembly, Begun and Held at Newbern, on the Seventh Day of July, in the year of Our Lord One Thousand Seven Hundred Ninety Four, and of*

the Independence of the United States of America the Nineteenth: It Being the Second Session of Said Assembly. Newbern: F. X. Martin, 1794.

1795

[Green, James H.] [*Green's Annual Pocket Ledger, Requisite for the Gentleman, Merchant's and Planters.* Newbern: F. X. Martin, 1795.]

North Carolina. General Assembly. *The Acts of the General Assembly of the State of North Carolina, Passed During the Sessions Held in the Years 1791, 1792, 1793, and 1794.* Newbern: F. X. Martin, 1795. A copy of the plan for the city of Raleigh is inserted between pp. 47-48 of the Duke University Law School Library copy.

[Price, Jonathan.] *A Description of Occacock Inlet, And of Its Coast, Island, Shoals, and Anchorages With the Course and Distances, To and Fro the Most Remarkable Places, and Directions to Sail Over the Bar and Through the Channels.* Newbern: Francois Xavier Martin, 1795. From a notice of copyright in *The North Carolina Gazette*, Jan. 2, 1796 at 4, col. 3: "Be it known that on the 12th day of December, 1795 Jonathan Price, William Johnston and Francois Xavier Martin entered in this office [U.S. District Ct. for N.C.] the title of a map, and pamphlet the whereof they claim, as proprietors,"

1796

A Chart of the Law of Inheritance, of the State of North Carolina, Exhibiting an Historical View of it, As It Stood at the First Settlement of the Country, The Changes It Has Undergone, and Its Present State. Newbern: F. X. Martin, 1796.

Martin, Francois X. *A Few Cases Determined in the Superior Courts of North Carolina.* Newbern: F. X. Martin, 1796. Although no copy of this has ever been found, it was advertised in the *North Carolina Gazette*, May 23, 1796, at 1, col. 1. "This day is published and for sale at the Printing Office"

Martin, Francois X. *A Report of a Case Lately Decided in Fayetteville Superior Court of Law, wherein the following questions are discussed and settled: vi. I. Whether, in the Case of the Sealed Instrument, Unattested by any Subscribing Witness, The Handwriting of the Party May Be Admitted in Evidence. II. Whether an Action of Debt Lies Upon Such an Instrument?* Newbern: Martin, 1796.

Martin, Francois X. *A Treatise on the Jurisdiction of Justices of the Peace, In Civil Suits According to the Laws of the States of North Carolina.* Newbern: F. X. Martin, 1796. Advertised in the *North Carolina Gazette*, May 23, 1796, at 1, col. 1. No copy has been found, however.

———. [*The North Carolina Almanack, for the year of Our Lord, 1797; and of American Independence, xxi-xxii, Being the 1st after Leap Year. Cal-*

culated for the Meridian of Raleigh, 35 deg. 54 min. North Lat. 3 deg. 36 min. Longitude, West from Philadelphia. Newbern: F. X. Martin, 1796.] Advertised in *North Carolina Gazette*, Sept. 10, 1796, at 1, col. 1.

[*Minutes of the Neuse Babtist [sic] Association, Held at Little-Contentney, Glasgow County, October 1795*]. "Just Published and for sale at the Printing office . . . Jan. 5." *North Carolina Gazette*, Feb. 27, 1796, at 4, col 2.

[Price, Jonathan, and John Strother.] [*A Chart of the Sea Coasts, from Cape Henry to Cape Roman, and of the Inlets, Sounds and Rivers of North Carolina, to the Towns of Edenton, Washington, Newbern and Wilmington.* Newbern: F. X. Martin, 1796.]

[Price, Jonathan, and John Strother.] [*A Map of the State of North Carolina, Agreeable to Its Present Boundaries.* Newbern: F. X. Martin, 1796.]

A Table for Receiving and Paying Gold at the Present Standard, According to the Act of Congress Regulation Foreign Coins. Passed on the 9th of February, 1793. Calculated for the Use of the Bank of the United States. Newbern: F. X. Martin, 1796.

1797

Hamilton Versus Eaton: A Case Respecting British Debts, Lately Determined in the Circuit Court of the United States, for North Carolina District, Presided by C. J. Ellsworth. Newbern: Francois Xavier Martin, 1797. This was reprinted in the next entry.

Martin, Francois X. *Notes of a Few Decisions in the Superior Courts of the State of North Carolina, and in the Circuit Court of the United States, for the North Carolina District.* Newbern: Xavier Martin, 1797. This was individually published and also issued bound, with Latch's cases. This volume was commonly referred to as *Martin I & II*. It is reprinted in Volume 1 of the *North Carolina Supreme Court Reports*. Not surprisingly, Martin is counsel in a large number of the cases.

Watson, R., D.D.F.R.S. *An Apology for the Bible, In a Series of Letters, Addressed to Thomas Paine, Author of a Book, Entitled, The Age of Reason, Part of the Second, Being an Investigation of True and of Fabulous Theology.* Newbern: Francois Xavier Martin for Joseph Shute and Durant Hatch, 1797.

1801

[Billet, Madame Anne Louise Francoise (Delorme).] *Historical Memoirs of Stephanie Louise De Bourbon-Cont.* Translated by F. X. Martin. Newbern: F. X. Martin, 1801. This is the first in a series of apparently pirated novels that Martin printed from 1801 to 1804. The author of the work was never named; the publisher or printer's name appeared infrequently. Listed under "Books printed and for sale at this office" at the end of

Vol. I of Martin's *The Public Acts of the General Assembly of North Carolina* (1804). This annotation also applies to the next five entries.

[de Riccoboni, Mme. Marie-Jeane (de Heurles Laboras de Mezieres).] *Letters of Adelaide de Sancerre. To Count de Nance . . .* [Translated by F. X. Martin.] Newbern: [F. X. Martin], 1801.

1802

[de Riccoboni, Mme. Marie-Jeane (de Heurles Laboras de Mezieres).] *Lord Rivers. A Novel for the Painter's Benefit.* [Translated by F. X. Martin.] Newbern: [F. X. Martin], 1802. Nicholls, in his discussion (see section I), said: "Martin's translation is direct, austere, and understated. It contains no extraneous matter and expresses the original thought with bare simplicity. This may not have been an effect of his good taste as a translator but simply [sic] the result of his translating method." [at 280].

[de Riccoboni.] *The Female Foundling: A Novel, in a Series of Letters from Elizabeth-Sophia de Valliere, to Louisa-Hortensia de Canteleu.* [Translated by F. X. Martin.] Newbern: [F. X. Martin], 1802.

[de Riccoboni.] *Jenny.* [Translated by F. X. Martin.] Newbern: F. X. Martin, 1802-04?].

[Edgeworth, Maria.] *Castle Rack Rent.* Newbern: [F. X. Martin, 1802 or 1803].

Evans, William D. *Essays on the Action for Money Had and Received, On the Law of Insurance, and on the Law of Bills of Exchange and Promissory Notes.* Liverpool: Merritt and Wright, 1802; Newbern: Martin and Ogden, 1802. The last page contains an advertisement for Martin's translation of Pothier's *Obligations*.

Pothier, Robert J. *A Treatise on Obligations, Considered in a Moral and Legal View.* Translated by F. X. Martin. 2 vols. Newbern: Martin and Ogden, 1802. Probably translated from *Traite de Obligations*. Nouvelle ed. Paris, 1768. The two volumes are normally bound together.

Taylor, John L. *Cases Determined in the Supreme Courts of Law and Equity of the State of North Carolina.* Newbern: Martin and Ogden, 1802. This is reprinted in volume 1 of the *North Carolina Reports*, along with *Martin I* and *II*.

1803

Martin, Francois-Xavier. *Proposals for Printing by Subscription, A Digested Index to the American Reports.* Newbern: F. X. Martin, 1803. Broadside. Reproduced at the end of this bibliography.

Martin, Francois-Xavier. *Treatise on the Powers and Duties of Executors and Administrators: According to the Laws of North Carolina.* Newbern: Martin and Ogden, 1803. From Martin's "Preface":

To his Brethren of the Bar, he does not offer it as a Work of

Authority on which alone they may safely rely in the Investigation of any Point on which their opinion may be requested, but as one that will point out the largest and purest sources, and which will, he trusts, prove a very convenient Vade Mecum on the Circuit.

1804

Delaval: A Novel. Newbern: Franklin and Garrow, 1804. This novel was originally published anonymously in London. See Billet entry, 1801. Franklin and Garrow probably completed this work when they took over Martin's printing business, sometime in 1804.

Martin, Francois-Xavier. *The Office and Authority of a Justice of the Peace, and of Sheriffs, Coroners, etc. According to the Law of the State of North Carolina. A New Edition.* Newbern: Martin and Ogden, 1804.

Maunde, John. *The Rural Philosopher: or, French Georgics. A Didactic Poem.* [Translated by F. X. Martin.] Newbern: Franklin and Garrow, 1804. See entries for the year 1801.

Martin, Francois-Xavier. *An Account of Louisiana, Exhibiting a Compendious Sketch of Its Political and Natural History and Topography, With a Copious Appendix Containing Several Important Documents.* Newbern: Franklin and Garrow, 1804. This served as the basis of Martin's 1827 history. It is primarily a compilation of historical documents.

North Carolina. General Assembly. *The Public Acts of the General Assembly of North Carolina.* 3 vols. The subtitles of vols. I & II describe the volume's contents:

Vol. I. Containing the Acts from 1715 to 1790; Revised and Published Under the Authority of the Legislature, By the Honorable James Iredell, Esquire, Afterwards One of the Associate Justices of the Supreme Court of the United States. And Now Revised by Francois Xavier Martin. Newbern: Martin and Ogden, 1804.

Vol. II. Containing the Acts from 1790 to 1803; Revised and Published Under the Authority of the Legislature. Newbern: Martin and Ogden, 1804.

Vol. III was published in June of 1804 separately as a supplement to *Iredell's Revisal*. Martin then decided to revise Iredell's compilation and republish it with his supplement. Hence, Vol. I was published after Vol. II. The supplement merely required a new title page to become Vol. II.

Martin printed session laws for the years 1804-1807 as an appendix to Vol. II: *North Carolina Public Acts, 1804 and 1805: Public Acts, 1806; Public Acts, 1807; being the 1st, 2d and 3d*

Appendixes to "Public Acts, vol. 2, 1790 to 1803 by F. X. Martin, Newbern: 1804." Fac-Simile Reprints. Washington, D.C.: Statute Law Book Co., 1913.

1806

- Martin, Francois-Xavier. *Treatise on the Powers and Duties of a Constable According to the Law of North Carolina*. Newbern: John C. Sims, 1806.
- Martin, Francois-Xavier. *Treatise on the Powers and Duties of a Coroner According to the Law of North Carolina*. Newbern: John C. Sims, 1806. This was bound with Martin's *Treatise on Sheriffs* (see next entry).
- Martin, Francois-Xavier. *Treatise on the Powers and Duties of a Sheriff According to the Law of North Carolina*. Newbern: John C. Sims, 1806.

1811

- Martin, Francois-Xavier. *Orleans Term Reports, Or Cases Argued and Determined in the Superior Court of The Territory of Orleans*. 2 vols. Vol. I. New Orleans: John Dacqueney, 1811. Vol. II. New Orleans: Raoche Brothers, 1813. Both volumes report cases from Martin's term on the bench. It is reprinted in volume 1 of the *Louisiana Reports*.

1816

- Louisiana Term Reports, or Cases Argued and Determined in the Supreme Court of That State (1813-1830)*. 18 vols. New Orleans: Various Publishers, 1816-1830.
- Martin, Francois-Xavier. *A General Digest of the Acts of the Legislatures of the Late Territory of Orleans, and of the State of Louisiana, and the Ordinances of the Governor Under the Territorial Government; Preceded by the Treaty of Cession, The Constitution of the United States, and of the State, with the Acts of Congress, relating to the government of the country and the land claims therein*. 3 vols. New Orleans: Peter K. Wagner, 1816. Printed in French and English.

1820

- Martin, Francois-Xavier. *Martin's Treatise on the Powers and Duties of Executors and Administrators, According to the law of North Carolina Revised and Adopted to the Existing Law by a Gentleman of the Profession*. Raleigh: J. Gales, 1820.

1827

- Martin, Francois-Xavier. *The History of Louisiana. From the Earliest Period*. 2 vols. Vol. I. New Orleans: Lyman and Beardslee, 1827. Vol. II. New

Orleans: A. T. Penniman and Co., 1829. This is primarily a compilation of historical documents. Interestingly, Gayarré, a contemporary of Martin and one of his earliest biographers, relied heavily on this history in the production of Gayarré's *Essai historique sur la Louisiana* (2 vols. 1830). The *Dictionary of American Biography* calls it "largely a translation of Martin's *History of Louisiana*."

1829

Martin, Francois-Xavier. *The History of North Carolina. From the Earliest Period*. 2 vols. New Orleans: A. T. Penniman & Co., 1829. This is primarily a compilation of historical documents.

1851

Martin, Francois-Xavier. "The Judiciary." In *The New Orleans Book*, edited by Robert G. Barnwell, 32-34. New Orleans: Wright's and Hosty's Steam Press, 1851. Six long-winded sentences which explain the worth of the judiciary. It was reprinted in *The Louisiana Book: Selections from the Literature of the State*, edited by Thomas McCaleb, 299-300. New Orleans: R. F. Straughan, 1894. It is an excerpt from Martin's *History of Louisiana*.

1882

Martin, Francois-Xavier. *The History of Louisiana, from the Earliest Period*. New Orleans, James A. Gresham, 1882. Reprinted at New Orleans: Pelican Publishing Co., 1963.

III. Miscellaneous

Forms from an advertisement in *North Carolina Gazette*, Dec. 13, 1793, at 4, col. 2.

A assortment of BLANKS For Clerks of Courts, Attornies, Sheriffs, Merchants and others, viz. Writs, subpoenas, executions, witnesses and Jurymen's tickets, marriage licenses and bonds, apprentice's indentures, guardian, administration, appeal and bail bonds, warrants, attachments, leases, deeds, dedimus potestatem's, declaration in ejectment, trover, assault and battery, debt, covenant for delivery of specific articles, goods, sold on a quantum valebant or a fixed price, work and labour on a quantum meruit or a fixed price, insimul computassent, trespass quare clausum, detinue, on promissory notes, do. with indorsements, etc., etc., etc. AND, a few plans of the city of RALEIGH.

Newbern, November 15th, 1808.

P R O P O S A L S
FOR PRINTING BY SUBSCRIPTION,
A
DIGESTED INDEX
TO THE
AMERICAN REPORTS.

By *FRANCOIS-XAVIER MARTIN*,
of *NORTH-CAROLINA*.

SPRUNG from the same stock, speaking the same language, occupying the same division of the western hemisphere, united under one Federal Government, having the same political and commercial relations with the other nations of the earth, the inhabitants of these States cannot differ much in their municipal laws and customs. In reality the common law of England is in every State the basis of its jurisprudence, varied in a few instances only by some legislative improvements, which necessity has required or convenience suggested. Every where wants nearly similar have produced similar emendations.

HENCE the decisions of the courts in the several States cannot fail to be interesting to those, generally, who may have the wish and the leisure to examine and compare them, and to the jurist, particularly, who is called by duty and interest to seek a knowledge of them all.

THESE are now accumulated to more than twenty volumes; and it is imagined that the compression of them into a portable one, being a digest of every case alphabetically arranged; must be an important index to those who are in possession of the whole, and a valuable substitute to those who are willing to save the expence and the labour of so many volumes.

It is presumed that nothing further need be said in regard to the utility of this work, abstractedly considered. In offering it to the public, the compiler will only say, that to an experience of many years in the practice of the law and in several compilations of a similar nature, chiefly confined to the State in which he resides, his minutest care and best exertions are added—in the hope that the undertaking will be found to be executed in a manner to deserve the patronage he has solicited.

THE work is executed on the plan of the *Digested Index to the Chancery Reports*, lately published in England, and will refer to every adjudged case recorded in the American books of Reports, viz. *Root's*, *Kirby's*, *Coleman's*, *New-York Term Reports*, *Opinions given in the Mayor's Court of New-York*, *Dallas's*, *Wallace's*, *Washington's*, *Call's*, *Haywood's*, *Taylor's*, *Be's*, and two pamphlet volumes published in N. Carolina, the one by *D. Cameron, Esq.* the other by the maker of this compilation.*

To avoid confusion, all the cases depending on acts of the Legislature or on rules of practice of the several States, have been placed under two general heads, divided into a distinct paragraph for each State.

* If there be any other American reports, they will be procured and added before the work is put to press.

CONDITIONS.

I. THE work to be comprised in one octavo-volume, printed on good paper and type, and delivered to subscribers in law binding.

II. THE price to be four dollars, payable on delivery.

SUBSCRIPTIONS are received by Messrs. *Exra Sergeant & Co. H. Caritat, T. & J. Swords*, in New-York; Mr. *Sheppard Kollock*, Elizabethtown; Messrs. *Mathew Carey, John Conrad & Co. T. Bradford*, and *George Davis*, Philadelphia; Mr. *Rice*, in Baltimore; Messrs. *Cotton & Stewart*, Alexandria; Messrs. *Conrad, Rapin & Co.* City of Washington, Mr. *Wm. Pritchard*, Richmond; Mr. *Edward Mirick*, Norfolk; Messrs. *Sommerville & Conrad*, Petersburg; Mr. *A. Hodge*, Halifax; Mr. *R. Davidson*, Warrenton; Mr. *Lemuel Standin*, Edenton; Messrs. *Jo. Gales and W. Boylan*, Raleigh; Mr. *Allmand Hall*, Wilmington; Mr. *Peter Perry*, Fayetteville; Messrs. *Crow & Querry*, Charleston—and other Book-Sellers throughout the United States.

It is requested that the subscription papers be returned to the publisher at New-York, by the first of January next, when the book will be put to press.

Subscribers' Names.

Residence.

Fig. 1. Broadside printed by Martin. From the North Carolina Collection, University of North Carolina Library, Chapel Hill, North Carolina.

