

THE CENTENNIAL OF 111 STATE STREET THE HOME OF THE VERMONT SUPREME COURT

When the first settlers came to Montpelier, they found the grounds later to be used as the site of the three successive State Capitols and the Supreme Court building covered with tall maple trees. This meadow was pitched by Jacob Davis, and cleared by Jacob and his sons, in 1787. Jacob, who was the first permanent settler, was reputed to have the strength and stamina to clear an acre of land of trees, cut to log lengths, in a day, by himself, and continue the same for many days in a row. Once the meadow was cleared, the land produced four hundred bushels of potatoes a year. Jacob grew ten years of Indian corn on that land, without a shovelful of manure. One year he planted wheat, and reaped eighty bushels per acre, all of superior quality.¹

Jacob Davis had an idea this meadow would be an ideal spot for the seat of government, long before Montpelier was chosen as the capital city in 1805. That year, Thomas Davis, Jacob's son, donated the land to the use of the State. State Street was laid out and the first Pavilion Hotel was built by Thomas to serve the needs of legislators shortly before the first State House was completed and occupied in 1808. The first capitol was an octangular wooden structure, located to the west of the Pavilion, sited twelve rods back from State Street and about the same distance from the back of the Pavilion.²

The Supreme Court was created by the 1777 Constitution. Moses Robinson, the first Chief Judge, and the other four Associate Judges, started hearing cases in 1778, using the county courthouses in the shire towns as their temporary homes, first at the Westminster courthouse and the Catamount Tavern in Bennington, and later, as the counties grew, on a grand tour that took the judges to fifteen different shire towns, at times twice a year, to conduct the court's business. Not until the State House annex was constructed in 1888 was there a place the high court could call its home.

The 1786 Constitution first established the principle of separation of powers of the three branches of state government. Physical separation was not what was intended, although the Capitol housed the legislative and executive branches from 1808, leaving the judicial branch to move week by week throughout the state, before the three branches were at last joined together in 1888. The present legislative lounge, that long room on the west side of the Capitol, with the elegant fireplace, and the rooms northerly of the courtroom, served the court for nearly 30 years before the legislature finally voted to erect a building to reduce the overcrowding at the State House. That project did not come to fruition without controversy.

Capitol construction

The State House was the first building constructed by the State of Vermont. A year later, the State Prison was erected at Windsor. Montpelier paid for the first State House.³ The State raised a special tax of one cent on a dollar of each acre of land in the state to pay for the prison. The early legislatures were suspicious of public debt. But the State's needs continued to grow, as government expanded into new areas of regulation and services.

¹ Daniel Pierce Thompson, *History of Montpelier, Vermont* (Montpelier, Vt.: E.P. Walton, 1860), 40, 42.

² *Id.*, 110; *Burlington Free Press* October 23, 1994, 16.

³ Thompson, *Montpelier*, 104.

The sum of \$36,000 was appropriated to construct a separate building for the State Library, Supreme Court, and the Vermont Historical Society in 1884.⁴ The committee assigned to oversee the construction decided to expand the Capitol instead. The Annex was constructed in 1886-1888, and the Supreme Court first held its sessions in the new west wing of the State House in 1888.⁵

According to Thomas Valentine Cooper, in 1883 Vermont had no State debt, except \$131,000 in bonds for the Agricultural College.⁶ In 1919, the state's debt had grown to \$1,580,787, including bonds for the Agricultural College, School Fund, and for public buildings (\$170,000), among others. Those public buildings bonds were issued in 1917 and were due for repayment by 1935.⁷

By 1914, there were a few properties owned by the State other than the State House. There was the Vermont Reform School in Vergennes (established in 1837; renamed the Vermont Industrial School in 1900 and the Weeks School in 1937); the Vermont State School for the Feeble-Minded (authorized 1912, constructed 1915; renamed the Brandon Training School in 1929); and the Waterbury State Hospital, established in 1891. The new Supreme Court, State Library, and Vermont Historical Society building was the second structure to be built to serve the needs of the State in Montpelier, after the State Houses. Today, state buildings ring the capitol grounds.

The Need

The legislature's special committee to study the space needs of government reported in 1915 that a separate building was the answer, as any additional increase in the size of the Capitol would destroy the beauty of the present building. The State House was crowded. The Secretary of State had one room, 18' square, and its stenographer had to work inside the vault. Thousands of volumes of the State Library had to be stored away for lack of display space.⁸ The Treasurer had to use the window sills of the main hallway of the building for meetings. There were 65 Senate and House Committees in 1915, and only six or seven hearing rooms to accommodate them. There were occasions when three or four committees would meet in the Senate chambers at the same time. The treasures of the Vermont Historical Society were "stored in old-shoe-boxes and in case of fire would be lost forever to the state."

The Supreme Court courtroom was too small and so were the Justices' quarters. The committee reported, "The judges' chamber is so small that they can all shake hands with each other without leaving their chairs. The consultation of the judges on cases heard is held in a bed room at the Pavilion and the lack of consultation room or rooms in connection with the state library is one of the chief reasons for the delay of decisions."

The committee recommended \$200,000 for alterations of the State House, and the construction of a separate building for the VHS, State Library, and Supreme Court, "confident

⁴ "An act for the erection of a building for the use of the state library and other like purposes," No. 227, *Acts and Resolves passed by the General Assembly of the State of Vermont* 1884, 245-246.

⁵ Nancy Price Graff and David Schutz, *Intimate Grandeur Vermont's State House* (Montpelier, Vt.: Friends of the Vermont State House, 2015), 102-104.

⁶ Thomas Valentine Cooper, *American Politics (non-partisan) from the Beginning to Date* (Boston: Russell & Henderson, 1883), 100.

⁷ *The Commercial and Financial Chronicle* 1918 (New York: William B. Dana, 1919), 17.

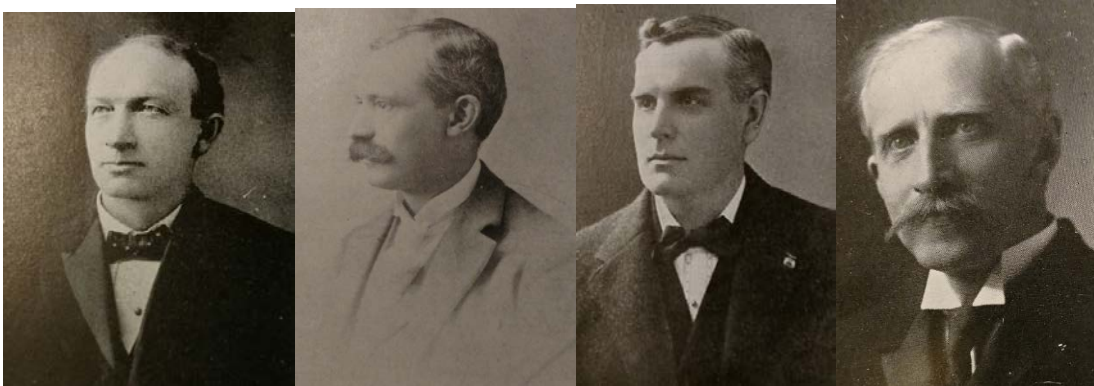
⁸ The report noted that the books, appraised at \$250,000, constituted the "greatest single asset of the state." "Report of the joint special committee to investigate the necessity of additional rooms or buildings for certain state purposes, *Journal of the House of Representatives of the State of Vermont* 1915, 802-806.

that the proposed act submitted herewith will not involve burdensome taxation and will not greatly add to the biennial appropriation.”⁹

The Times

These were perilous times. The world was at war. Vermonters were in Europe, fighting the War to End All Wars. Woodrow Wilson was President. Horace Graham was Governor. The world was changing rapidly. Daylight savings time began on March 31, 1918. The first report of the devastating flu in the United States was published that month. That July Czar Nicholas II, the Czarina, and their children were killed. The Armistice was signed November 11. In April of 1918, the first telephone service was installed at the State House, with two trunk lines.¹⁰

It had been only three years since the Vermont Supreme Court had suffered a crisis of authority.

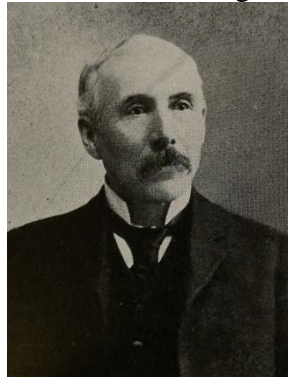


John H. Watson

Seneca Haselton

George M. Powers

William H. Taylor



Willard W. Miles

The Court

While the political process for erecting its new home proceeded, the Vermont Supreme Court suffered a shock to the system. For most of the state’s history, with very few exceptions, the legislature had respected a seniority system for the election of judges. Judges and Justices who indicated a willingness to continue in office were reelected year after year, biennium after biennium, replacing those who died or retired by moving each remaining judge up the rank until it was his turn to serve as Chief Judge. In 1912, the Court consisted of Chief Judge John Rowell,

⁹ Id.; Graff and Schutz, *Intimate Grandeur*, 107.

¹⁰ *Burlington Free Press*, April 2, 1918, 2.

Loveland Munson, John H. Watson, Seneca Haselton, and George M. Powers. Chief Judge John Rowell retired on September 30, 1913, and Governor Allen Fletcher appointed George M. Powers to replace him as Chief, rather than Loveland Munson, who would have taken the first chair by order of seniority.

The constitutional amendments of 1913 changed the opening date of the legislature from October to January, and made provision for the holding over of terms that ended under the old system on the last day of November, 1914 until a new election could be held. The Supreme Court doubted the effectiveness of this transitional provision. To avoid any question of the court's legitimacy, the entire court resigned effective November 30, 1914. No one expected Governor Allen Fletcher to change the constituency of the court, but after he reappointed Powers, Watson, and William H. Taylor, he passed over Chief Judge Loveland Munson and Seneca Haselton and named Robert Healy and Leighton Slack instead, advancing Powers to Chief Justice.¹¹ This was not received well.

In his December 1914 appointments, Fletcher's actions created a storm of protest. The annual meeting of the Vermont Bar Association was postponed a month, until January 5, 1915, when the Association resolved that "the solution of this matter rests with the General Assembly," and that the legislature "will meet that responsibility and perform its duty faithfully, considerately, and temperately."¹² Fletcher, condemned for mixing politics into the choice of justices, explained his reasoning in his Farewell Message, alluding to the age of the men he replaced, and essentially defying the bar association:

As to the personnel of the court I have this to say, it is absolutely true that the primary consideration in my mind was not necessarily to do that which absolutely met the wishes of the bar association. The bar association is made up of two hundred or more men, but I did have in view primarily as one who had been in this Legislature for ten years and who was in touch with conditions both as such and as executive. I did have in view primarily in the personnel of that court that which I thought best not for the bar association but for the 350,000 people in this State for whom I had taken the oath of office to do the best I could for those were the people I had in view when I took that action.¹³

Governor Fletcher claimed he had the opinion of the Chief Justice that his appointments would extend to two years, and that he had it in writing, signed by Justice Watson.¹⁴

With Fletcher retired, the legislature voted two bills and sent them to Governor Charles W. Gates for signature, calling for legislative elections of justices and judges, which created a fear that if the present Court did not resign, there would be two Supreme Courts, and judicial confusion. Gates sent word to the Court that he was poised to sign the legislation, and this caused the Justices to resign, in order to avoid the problem. The legislature then elected Loveland Munson Chief Justice, and Watson, Haselton, Powers, and Taylor as Associate Justices in that order, the order of seniority that would have been followed without Fletcher's independent thinking.¹⁵

¹¹ William C. Hill, "Vermont's Judicial Crisis of 1914-1915," 38 *Vermont History* 124-138 (1970).

¹² *Id.*, 126.

¹³ <http://vermont-archives.org/govhistory/gov/govinaug/inaugfare.htm>

¹⁴ *Id.*

¹⁵ *Id.*, 137. George M. Powers' first stint as Chief Justice had lasted a little less than two months. After Munson retired in 1917, Watson was elected Chief, and when Watson died in 1929, Powers was appointed Chief by Governor John Weeks, as the seniority system directed. Order was restored for another several decades.

In 1915, there was another significant change to the judicial system. That year the legislature passed a modern civil code, the Practice Act of 1915, signaling the end of common law pleading, the system that all Vermont lawyers and judges had used throughout their careers. The modern civil code had been enacted in other states, beginning in New York in 1849, and Vermont was one of the last states to change.¹⁶ The Code was a legislative act. “No pleading shall fail for want of form” is a fair synopsis of how the law changed. It was an instruction manual for the conduct of court proceedings. There would be four civil actions—contract, tort, replevin, and ejectment. Pleadings would be simple and direct. Suddenly, a whole set of lawyer’s skills and judicial precedent became obsolete. Anybody should be able to file a lawsuit and survive a procedural challenge based on technical imperfection of the pleadings. Amendment would be liberally allowed. Form would take a back seat to substance.

The five-member court in 1918 was led by Chief Justice John H. Watson. Before the 1914 constitutional amendments, the position was named Chief Judge. Watson was 57 years old, in his 19th year on the court and third year as Chief. Seneca Haselton was 60, George M. Powers 47, William H. Taylor 55, and Willard 63. All had been members of the high court for at least a dozen years, and all had served as Superior Judges before rising in rank to the high court.

Referendum

A referendum is a public vote approving or disapproving legislation. It may be binding or non-binding; it may have some legal effect or merely serve as a poll of public opinion. In Vermont’s experience, the voters have been asked their opinion 30 times in 16 different elections, between 1784 and 1976.¹⁷ These are not constitutional amendments, where voters have the power to adopt, amend, or repeal the fundamental law. Referenda, in Vermont’s experience, have been non-binding. They address issues of public morality—whether the use and sale of alcohol should be prohibited, whether there should be a state lottery or pari-mutuel gambling, a direct primary, or women serving on juries. In the early years, before Vermont joined the union, its General Assembly turned to the voters for their opinion on the trial of land titles or issuance of paper money by the state. In 1969, the legislature asked the public for its sentiment on calling a constitutional convention, accelerating the methods for amending this primary law through legislation. In 1912, the Assembly asked the voters their view about the building of a \$300,000 State Library and Supreme Court building.

At 1914 annual town meetings, the voters cast ballots on a ballot that asked, “Shall an act of the general assembly of 1912, entitled, ‘An Act to provide for erection of a building for the use of the state library and supreme court, and for other state purposes,’ become a law July 1, 1914?”¹⁸ A majority of voters opposed the referendum by a vote of 16,820-19,284, which meant the law would take effect on July 1, 1915, instead of July 1, 1914. On March 31, 1915, the legislature repealed the 1912 act and appropriated \$150,000, half of the amount proposed three years earlier, for the construction of a building to relieve the State House of its overcrowding.¹⁹ A second referendum was not part of the act.

¹⁶ Lawrence M. Friedman, *A History of American Law* (New York: Simon & Shuster, 1985), 391-398.

¹⁷ Paul S. Gillies, “The Role of Voters in Legislation: Vermont Experience with the Referendum,” *Vermont Bar Journal* (June 2001), 11-17.

¹⁸ “An act to provide for the erection of a building for the use of the state library and supreme court, and for other state purposes,” No. 13, *Acts and Resolves* 1912, 12-14.

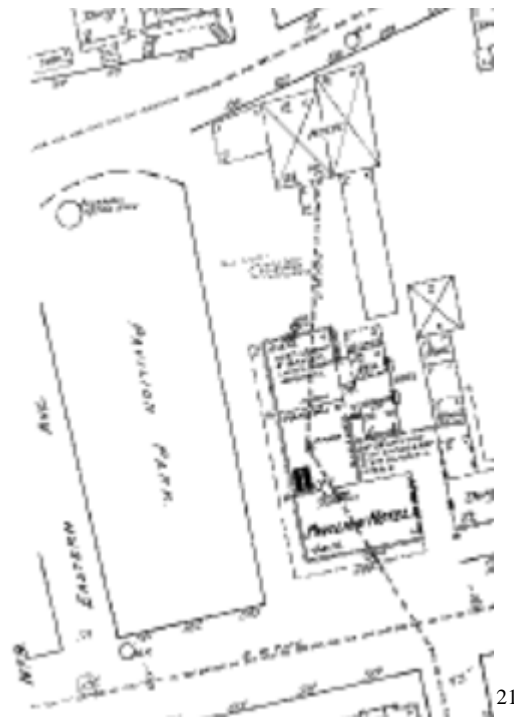
¹⁹ “An act to repeal No. 13 of the acts of 1912, providing for the erection of a building for the use of the state library and supreme court, and other state purposes,” No. 9, *Acts and Resolves* 1915, 73; “An act to provide for the erection of a building for the use of the state library and supreme court, and for other state purposes,” *id.*, 72-74.

The 1915 act left the decision on what and where to build to a commission, appointed by the Governor, who was ex officio chair. Improvements of the State House without a new building were also within the commission's discretion. The State Treasurer was authorized to borrow the money, and the trustees of the permanent school fund were authorized to loan the money "at the then average rate [of interest] at which such fund is invested." The act required the work to be done by the first day of September, 1917.

After the work had begun, more was needed to ensure that the building was finished, and by a 1917 act the legislature appropriated an additional \$50,000 to the budget. The improvements included "classical detailing on the front façade, including the balustraded terrace, and finer finishes on the interior including plaster cornice molding and classical ornamentation in the lobbies," and in the Supreme Court courtroom.²⁰

The Site

Before the Supreme Court and State Library building could be erected, the State had to deal with Thomas J. Heaphy, the owner of the Pavilion Hotel, who claimed he owned that land. For many years, the lands westerly of the hotel had been used by its patrons. On Sanborn Insurance maps from as early as 1889, that area was described as "Pavilion Park."



The Attorney General sued Heaphy to eject him from the land. Heaphy responded by claiming adverse possession for over 50 years. He argued the statute of limitations applied, even

²⁰ CRM Associates, *Supreme Court, State Library, and Historical Society Building 1916-1918, Historic Context and Description*, January 2017, 5; "An act providing for an additional appropriation for the erection of the new state building," No. 11, *Acts and Resolves 1917*, January 23, 1917, 8.

²¹ Digital Sanborn Maps 1867-1970, July 1889, Sheet 2.

though the state was exempt from the statute, but the Supreme Court was unpersuaded, concluding that the hotel's owners had no claim of right to justify adverse possession.²²

Eastern Avenue ran from the east side of the State House down to State Street, paralleling Western Avenue on the other side of the green, and providing a circular drive to the back of the Capitol, where legislators and state officials could enter the building. With the new building, Eastern Avenue was discontinued, and the drive from Court Street was extended to access the Capitol from the east.

Parking was provided by the Capital Garage, located at the rear of the Pavilion, its three floors capable of storing 65 cars reachable by an elevator. The garage employed 20-25 men in the summer.²³



The Building

The plans for the new building were drawn by the firm of Densmore & LeClear, Architects & Engineers, of Boston. Joseph R. Richards and William P. Richards, another Boston firm, contributed to the design as well. The total estimated cost of the new building was \$198,735. The building is located 140 feet from State Street, three and a half stories in height, constructed of ashlar granite from Barre's Wetmore & Morse quarry, to match the State House.²⁴

²² *State v. Heaphy*, 88 Vt. 428 (1915).

²³ *Capital Garage v. Powell*, 99 Vt. 244 (1925).

²⁴ Densmore & LeClear, Architects & Engineers, *Contract for Supreme Court, State Library, and Office Building for the State of Vermont at Montpelier, January 1916*; Joseph R. Richards and William P. Richards, *Building for the*

The structure of the building is made largely of reinforced concrete, chosen for strength and because it was fireproof.

The Vermont Historical Society occupied the first floor front, the Supreme Court some of the second floor, and the third was originally used for other state offices. The State Library was located on all floors, using the back half of the building. The Attorney General's office was located between the state library and the lawyer's room, adjoining the supreme court room.²⁵ The Department of Education had offices on the third floor, but even before the building was opened there was a concern that it was "increasing so fast lately that it may be impossible to accommodate it in the new building."²⁶

The building is neoclassical in style. This is reflected in the "grandeur of scale, simplicity of geometric forms, Greek—especially Doric or Roman detail, dramatic use of columns, and a preference for blank walls." It is a reaction to "the excesses of the Rococo style."²⁷

The bench, clerk's desk, sheriff's desk, chairs, and lower parts of the walls are mahogany, "while above the mahogany the finish is blended colors, to some extent resembling the sky with the sun setting, which adds a great deal to the brilliance of the room. The chairs used by the justices will be uniform instead of there being one odd chair. The floor is covered with blue carpet, which adds to the beauty of the room. It matches the draperies at the windows, which are also set off by a cream-colored curtain back of these. Some 40 mahogany chairs are placed the right side of the entrance to the court, for the convenience of the members of the bar." The doors are white pine, veneered with Vermont red birch. Portraits of former Chief Judges Isaac Redfield and John W. Rowell were hung above the clerk's desk on the left side of the courtroom. Matching that desk, on the right side, is the desk of the Sheriff. The bust of Jacob Collamer was displayed at the back of the courtroom.²⁸ The *Burlington Free Press* concluded that the "court room is a great improvement over the one formerly occupied. . . . The Vermont Supreme Court is now in a home that is as fitting to that assembly of jurists as any supreme court room in this section of the country."²⁹

The Opening Day

Something else was different on the morning of May 7, 1918. For the first time, the Supreme Court wore robes when hearing oral arguments. Chief Justice Loveland Munson had disapproved of robes, believing them to be pompous and unnecessary, and only after his death did the practice of wearing robes become the custom.³⁰ A new rule was first applied that first day, when an appeal was dismissed after no attorney on either side of the case appeared to argue before the Court. The local newspaper explained that the high court need not consider appeals "if attorneys do not look after them."³¹

State Library, Supreme Court, etc. Montpelier, Vermont, unpublished, 1916; CRM Associates, *Supreme Court, State Library, and Historical Society Building 1916-1918, Historic Context and Description*, 1.

²⁵ *Barre Daily Times*, December 26, 1918, 8.

²⁶ *Barre Daily Times*, March 20, 1918, 8.

²⁷ Kathleen Kuiper, "Neoclassical architecture," *Britannica Concise Encyclopedia* (Chicago: Encyclopedia Britannica, Inc., 2008), 1342.

²⁸ *Barre Daily Times*, May 6, 1918, 8. Today Jacob is balanced by a bust of Elijah Paine, formerly a member of the court and for more than 40 years U.S. District Judge. Some attorneys have slyly rubbed Elijah's bald pate for luck before their arguments.

²⁹ *Burlington Free Press*, May 9, 1918, 10.

³⁰ *Burlington Daily News*, May 8, 1918, 3.

³¹ *Barre Daily Times*, May 9, 1918, 1.

A call of the docket started the proceedings, followed by the reading of six opinions issued by the Court, “so that one of the heaviest day’s work in the first day of the term of court occurred.”³² There were 106 cases on the docket, including two murder cases and one significant public trust case.³³ Seven cases were argued. There were many lawyers in attendance at the opening session. Many were moved by the beauty of the new home of the court. Sheriff Frank H. Tracy read a proclamation: “Hear ye! Hear ye! The honorable supreme court appointed by law to be holden at this time and place is now open. All persons having business herein draw near and you shall be heard. God save the state of Vermont.”³⁴ Rev. H.J. Long, Catholic clergyman, conducted devotional exercises.³⁵

The first cases

The first cases decided once the Court was in its new quarters were largely private disputes. The seller of land boasted there was “no better land in Vermont” than this, and could support 40 cows in the pasture. The buyer sued for rescission of the sale, claiming these statements were false. The Supreme Court concluded that no one would mistake the first statement as the truth, being part of the natural puffery that comes with land sales, but took the claim about the capacity of the pasture seriously, as that was a claim that could be verified.³⁶

The Court allowed a non-expert to testify about the signature of the seller, as he was familiar with the seller’s handwriting. That the Chief Justice had testified at the trial was no reason for reversal. The Chief didn’t participate in the decision. The trial court’s decision to allow a witness to testify but not to disclose his conviction for selling liquor without a license was within the discretion of the court. This was *In re Barron’s Estate*, a matter decided on the briefs, without oral argument.³⁷

Five colts escaped their pasture, and blew through a gate at a crossing before being killed by a locomotive, and the high court was faced with a decision on whether the farmer or the railroad was liable. The gate’s hook was so loose that it “might be displaced by the whisk of a tail or rubbing of a nose.” The jury ruled for the farmer. The Supreme Court reversed the decision, awarding victory to the railroad. Justice George M. Powers explained, “The gate was provided for the use and benefit of the plaintiffs. The defendant made no use of it and derived no advantage from it. We cannot regard an open gate as an insufficiency in the fence. If it and its fastenings were ‘good and sufficient’ within the meaning of the law, the duty of keeping it closed was upon the plaintiffs, and the fact that it was found open is not enough to impute negligence to or establish liability on the part of the defendant. This view seems to be supported by the weight of authority and harmonizes better with our statutory provisions.”³⁸

A man signed a will, following all of the necessary steps required by law. A month later his son was appointed his guardian, and in the hearing the father was loud when he should have been quiet. The jury regarded the will as invalid, based on the father’s behavior and his failure to oppose the guardianship, but on appeal the high court reversed the decision, finding the judge’s

³² *Barre Daily Times*, May 8, 1918, 2.

³³ *Burlington Weekly Free Press*, May 2, 1918, 9.

³⁴ *Barre Daily Times*, May 7, 1918, 1.

³⁵ *Burlington Daily News*, May 8, 1918, 3.

³⁶ *Nichols v. Lane*, 93 Vt. 87 (1919).

³⁷ *In re Barron’s Estate*, 92 Vt. 460 (1918). As the parties had agreed to submit the appeal on briefs, the cause was not summarily dismissed, as the first case had been that day. The dismissal of that first appeal was a penalty for non-appearance at oral argument, without court approval to rely on the briefs.

³⁸ *Dodge Brothers v. Central Vermont Railway*, 92 Vt. 454 (1918).

charge to the jury “well calculated to prejudice the minds of the jurors against the proponents’ case,” justifying a new trial. The decision is interesting as Justice Willard Miles filed an uncharacteristic dissent to the majority opinion, believing that the failure to object to the charge on the part of the lawyer for the attorney for the appellant should be fatal to the issue on appeal.³⁹

In another matter, the Supreme Court ruled that the State had a right to challenge a not guilty verdict in a murder case, without violating the due process rights of the defendant.⁴⁰

The most important decision of the 1918-1919 term was *Hazen v. Perkins*, long remembered and relied on in subsequent years as a critical articulation of the public trust doctrine. Sumner W. Perkins installed a gate at the outlet of Lake Morey and used it to raise and lower the level of the water. He owned several mills below the lake, and made changes to the lake as needed to maintain a proper flow of waterpower. He owned no land on the lake. Other owners sought an injunction to prevent his meddling with the natural level. The case is the first substantive exercise of the public trust doctrine in Vermont caselaw. The Supreme Court held that Perkins could not continue with his practice. The lake bottom was owned in trust by the public, and only the legislature could exercise control over it, and even then, only for public, not private purposes. The court held that Lake Morey is boatable and therefore public waters. Perkins’s prescriptive easement claim was no match for this higher species of property.⁴¹

The Supreme Court has heard and decided thousands of appeals since that time. Nearly that many oral arguments have been heard, and the decisions of the court have filled at least 111 volumes of *Vermont Reports* since 92 Vt., covering the 1918-1919 term. Finally, there was a quiet place and ample quarters, dedicated to the use of the justices, which must have had an impact on the deliberative process. No longer would the justices cram themselves into a Pavilion hotel room to reach consensus. And the five chairs of the Justices would be at last uniform, and proper.

Afterwards

For reasons not explained in the record, the building was closed per order of the State Board of Health in October of 1918 for two weeks.⁴² That month Governor Horace Graham described the final costs of the building in his farewell address.

During the present biennium, the new state building for the Supreme Court, State Library, Vermont Historical Society and state offices has been completed and occupied. The appropriations for this building totaled two hundred thousand dollars and the entire cost, including new stacks for the library and the complete furnishing of the Supreme Court room was \$202,873.87. The commission, believing that the State should have a Supreme Court room in keeping with her dignity and the standing of her Court, took the initiative and furnished the room at an expense of \$4,203.37. To do this they were obliged to borrow \$2,356.62 and hope you will see fit to reimburse them therefore. Of the appropriation of thirty thousand dollars for the expenses of the changes in the wings of the State House, formerly occupied by the library, for a central heating plant, and for repairs elsewhere \$26,957.71 was used, leaving a balance unexpended of \$3,042.29. I suggest that this balance be made available to reimburse the commission, thus keeping the entire cost of the new building, the necessary changes in the interior of the State

³⁹ *In re Clogston’s Estate*, 93 Vt. 46 (1919).

⁴⁰ *State v. Felch*, 92 Vt. 477 (1918).

⁴¹ *Hazen v. Perkins*, 92 Vt. 414 (1918).

⁴² *Bennington Banner*, October 17, 1918, 1.

House, and the central heating plant within the appropriations. Of the work you can judge without further comment on my part.⁴³

Horace Graham's long service in Vermont state government began with his election as Auditor of Accounts in 1902, a position he held until his election as Governor in 1917. The irregularities in his years as Auditor were revealed shortly before his term ended in October 1919, and he was promptly charged with larceny. His trial began in January. He was convicted following a sensational jury trial, and sentenced to serve three to five years in the State Prison. The day he was sentenced he was pardoned by the man who succeeded him in office, Governor Percival Clement.

Seneca Haselton resigned from the court on May 1, 1919 due to ill health, and John H. Watson became Chief Justice. Leighton P. Slack was appointed an Associate Justice. John Watson remained Chief until his death on December 7, 1929, when George M. Powers took the center chair.

The building filled up quickly, and various state officials were housed there. These included the Civil Works Administrator, State Finance Commissioner, the Commissioner of Industries, the Public Service Commission, Purchasing, the Tax Department, and the Attorney General, among others.⁴⁴ Then the building began to empty out, leaving the court with more space. The Free Library Service, part of the State Library, moved to Berlin in 1967.⁴⁵

The 1927 flood spread the Winooski River over State Street, but did not do significant damage to the Supreme Court building.

For many years, the door between the State Library and the Supreme Court on the second floor was open. The librarian was willing to lend a key to attorneys and justices to use the library during hours it was closed to the public. In 1940, Daniel Boone Schirmer's lawyer from Boston, Sidney Grant, who was arguing to place Schirmer's name on the General Election ballot, "was given permission to use the facilities of the State library tonight, where he worked preparing his arguments on two points of law."⁴⁶ The door was locked in the 1980s, isolating the court from the State Library.

The Supreme Court building appeared as a backdrop in many newspaper stories over the century. In February 1948, a *Burlington Free Press* reporter wrote, "In spite of the snow and the ice, a cheerful song from the throat of a robin filled the air around the supreme court building the other morning, lifting the spirits of those trudging up the hill."⁴⁷

The Pavilion Hotel, built in 1876, was beyond repair by the 1960s, when an idea was advanced to replace it with a modern building. This was opposed on grounds of historic preservation. The State had been using eight rooms at the hotel as offices. After the State purchase of the building, a compromise was struck, recreating the façade and porches of the hotel, while constructing five floors of offices. In December of 1969, a wrecking ball demolished the old building, and Governor Deane Davis cut the ribbon on the new Pavilion in August, 1971.⁴⁸ The first floor contained the museum, offices, and library of the Vermont Historical Society, which vacated the Supreme Court building, and allowed more space for the judiciary.

⁴³ Horace Graham, *Farewell Address*, October 1919, 2.

⁴⁴ *Burlington Free Press*, April 6, 1925, 2; *Burlington Free Press*, May 25, 1925, 14; *Burlington Free Press*, February 15, 1934, 2; *Burlington Free Press*, December 21, 1938, 7.

⁴⁵ *Burlington Free Press*, October 9, 1967, 11.

⁴⁶ *Burlington Free Press*, October 10, 1940, 2; *Schirmer v. Myrick*, 111 Vt. 255 (1941).

⁴⁷ *Burlington Free Press*, February 8, 1943, 2.

⁴⁸ *Burlington Free Press*, December 28, 1965, 6; *Burlington Free Press*, February 20, 1970, 27; *Bennington Banner*, August 25, 1971, 9.

A tunnel for heat pipes was constructed across the front lawn of the State House in 1978, supplying heat to the Pavilion and Supreme Court building. The cost was a million dollars.⁴⁹

The building was added to the National Register of Historic Places in November of 1978. It is part of Montpelier's Historic District designated as a "contributing" building to the district.

Granite, three stories, seven-bays, flat roof behind parapet. This Neo-Classical Revival style institutional building has a central door with pedimented surround within a five-bay projecting central pavilion. The building is fronted by a balustraded terrace. There is a deeply molded cornice and plain frieze. Another molded course delineates the first story and is in line with the bottom of the pediment above the front door. The central pavilion has tall recessed window bays with twelve-over-sixteen light sash over simple molded panels. There are three bays in the center flanked by single bays separated by shallow pilasters. The pavilion is flanked by single window bays on the main façade. The first floor has twelve-over-twelve light sash windows in line with the bays above. This building was built to house the Supreme Court and state library between 1915 and 1918. It provides visual balance for # 505 (133 State Street) – another granite building adjacent to the State House.⁵⁰

In March of 1980, with "the sound of rock music bouncing off the walls of the Vermont Supreme Court building, about 100 anti-nuclear power sympathizers gathered on the State House lawn Saturday to commemorate the first anniversary of the Three Mile Island in Pennsylvania."⁵¹

In 1987, the Pavilion Office Building was substantially enlarged, at a cost of \$3.7 million, including a two-story bridge linking it to the Supreme Court building. During construction, the Court had to move to temporary quarters.⁵²

Protesters dumped fifteen 60-pound bags of sand in front of the Supreme Court building in October of 1992, reacting to a decision affirming the Abenaki tribe's status. "Stop police brutality of the Abenaki" and "Abenaki and Cree lands: Not for Sale" were among the signs held by the crowd.⁵³

In November of 1998, on the day of the oral argument in *Baker v. State*, there was a rally for gay rights in front of the Supreme Court building. The *Free Press* reporter explained how 60 tickets for seating for the argument were issued on a first-come first-serve basis. In the article, the reporter described the courthouse as "an unremarkable granite structure just down the hill from the Statehouse."⁵⁴

An art gallery was created in a back corridor in 1999. In 2005, a security officer and a scanner became the visitor's first stop before entering the courthouse.

The final step in the continuing expansion of the Court's quarters occurred in 2016, when the State Library vacated its space in the building, its books and records relocated to the Vermont Law School, the State Archives, and the Vermont Historical Society. The State Library will soon have rooms in the VHS headquarters in Barre.

A unified court

Chief Justice Paul Reiber shepherded the reorganization of the judiciary in 2010 that fulfilled the promise of a unified court, long discussed but not fully achieved with the

⁴⁹ *Burlington Free Press*, July 27, 1978, 15.

⁵⁰ National Park Service, United States Department of the Interior, *National Register of Historic Places Continuation Sheet*, 202. <http://www.montpelier-vt.org/DocumentCenter/View/1076>.

⁵¹ *Burlington Free Press*, March 30, 1980, 13.

⁵² *Burlington Free Press*, September 17, 1987, 14; *Burlington Free Press*, August 6, 1988.

⁵³ *Burlington Free Press*, October 10, 1992, 18.

⁵⁴ *Burlington Free Press*, November 17, 1998, 11

constitutional amendments of 1974. The Commission on Court Reorganization had been formed in 2008 to propose a design for the system. In part a reaction to the recessionary cuts mandated by the legislature among all of state government, the legislation seated the administration of the court system entirely within the Supreme Court. It addressed the role of Assistant Judges, whose administrative control of courthouses in some shires had created a tension over who was in charge and whose judicial duties had been unclear before the effective date of the new law, by authorizing them with special training to perform other judicial duties, including uncontested divorces. The county clerk had been the clerk of the civil court for as long as there had been courts in Vermont. After 2000, the judiciary appointed the clerks of the court, who answered directly to the Court Administrator. The District, Family, and Superior Courts were merged into a single Superior Court, with Criminal, Family, Civil, Probate, and Environmental Divisions. All trial judges became Superior Judges.

The Supreme Court was given full authority over the courts in 2000 and full tenancy in the Supreme Court building in 2016.

Statistics

During 2017, the Supreme Court received 403 appeals and closed 384 cases. It heard 170 oral arguments and decided 86 cases on briefs. It issued 118 written decisions of the full court, and 134 from the rocket docket. Each justice wrote about 20 majority decisions. There were nine dissents, two concurring, and two concurring and dissenting opinions. Of the cases decided by the full court, 58 were affirmed, ten were reversed, and 23 were reversed and remanded.⁵⁵

During the 1918-1919 term of the Supreme Court, the justices issued a total of 24 decisions. Justices Willard Miles and William H. Taylor wrote three, Seneca Haselton four, George M. Powers six, and Chief Justice John H. Watson eight. There were 14 affirmances and eight reversals. There were three dissents filed. Nearly all of the 24 decisions had been heard by the Court in oral argument, and a majority had been decided by a jury trial.

In the centenary, in this building, a total of 50 Justices (out of the 134 judges and justices in all) have served on the Court. Dozens of Superior judges have sat with the high court when one or another of the justices has been conflicted or absent. In that time there have been 15 Chief Justices (out of a total of 37). And the many lawyers, the best Vermont has bred, have stood behind that dais and faced the justices and their penetrating questions.

Over the century, while the Supreme Court building has remained in place, the court itself has changed markedly. At the time Clarence Darrow argued for the defendant in *State v. Winters* (1929), the Court waved the one-hour maximum oral argument, and he spoke for 90 minutes.⁵⁶ Today, oral argument for cases heard by the full court is limited to 15 minutes per side, ending when the red light on the rostrum blinks insidiously. Cases that present no novel issue to add to the body of case law, that qualify for the Rocket Docket (1990), are limited to five minutes per side.⁵⁷ There are clerks and supporting legal and administrative staff for the court now, a Court Administrator, and a Chief Administrative Judge. In that building, law happens. There what the legislature has drafted is construed, what state and local officials have done is reviewed, and what the trial courts and juries have decided is affirmed or reversed. The building, mistaken by some visitors for a bank, projects the sober, Solomonic character of the highest court in the state, the last word on most controversies, the keeper of the constitution.

⁵⁵ Vermont Judiciary, *Annual Statistical Report for FY17*, 53-54.

⁵⁶ *Burlington Free Press*, January 13, 1928; *State v. Winters*, 102 Vt. 36 (1929).

⁵⁷ Kevin B. Smith, Alan Greenblatt, *Governing States and Localities* (CQ Press, 2016), 110; V.R.A.P. 33 & 33.1.