

*I did this in
2002 for a program
I presented to the
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JUDGE JAMES LEIGH OF BATH

By Myron C. Banks

By 1700, Thomas Dearham had imported a man named Stephen Swetman into the Province of North Carolina, and into the county of Bath. According to his indenture, he was from Braughing, in Hertfordshire, England, and he lived long enough to survive the Tuscorora War and to become a landowner, and for all I know, the progenitor of people still living in North Carolina today. I mention him only to note how rare it is in early North Carolina records to find mention of one's origins. I wish that a similar record existed for Judge James Leigh, the subject of this paper, but it does not. Without that record, I have spent countless hours trying to find him in a place other than Bath, and in 2002, I believe I did.

When James Leigh arrived in Bath with his wife Sarah and six named children, no later than October 1701, they were headrights of a woman named Hannah Cockerham. They arrived with a number of families with clear connections with Surry County, Virginia- the families of Thomas Dearham , Joseph Rogers and Hannah Cockerham- yet James and Sarah are not to be found in Surry records.

I have believed for years that Leigh left a clue to his origins in his 1728 will in which he left to his son John a plantation called the "Accomac Entry". Accomac Court minutes for the early years of that Virginia county provide an fairly clear record of a James Lee with a wife Sarah.

In February 1690/91, Sarah Helmot, a servant of Col. John Wise, was in court for having borne a child, William, out of wedlock. William Wise, a son of the Colonel, interestingly agreed to pay her fine of 500 pounds of tobacco.

In September 1692, Sarah consented to give her son to John Wise, Jr., another of the Colonel's sons, to be a servant. However, six months later James Lee brought suit against John Wise to recover William for his mother, whom he identified as his wife, declaring that she had given the child away "while under coverture", that is, while married and without her husband's consent. The court agreed and ordered William returned to his mother. From this we may

note how these dates fit with Jonathan Butcher's estimate of James Leigh's birth date

safely conclude that James and Sarah wed between February 1690/91 and September 1692.

In March 1694/95 Lee gave a deposition detailing a conversation he had heard while working at the home of another prominent leader on the Eastern Shore, Col. Charles Scarborough. While he does not specify the sort of work he was doing, he did state that he was "about 24 years old". *b. ca 1770*

On 20 October 1693, after James and Sarah had wed, Col. Wise made his will. He provided for his family and left a silver tankard to a friend before adding "I also give unto James Lee a two year old heifer." The will was probated on 19 November 1695, after James Lee had sued to recover the Helmot boy. Clearly this fact had no impact upon whatever impelled the Colonel to make the bequest to Lee.

In April 1696 Lee became the master of an apprentice, who was bound for four years and three months to learn the trade of a tailor, suggesting to me that perhaps that was James Lee's principal occupation. Years later in Bath, when James Leigh's inventory was taken, many bolts of cloth and many buttons were numbered among his effects-more than an interesting coincidence?

In 1698 Lee witnessed the will of Robert Colebourne, from whom he had previously leased a farm for 15 years. Later the widow Colebourne sued Lee for breach of the lease but in April 1701 a jury found in favor of Lee. It is not clear from the record whether Lee was present when the suit was heard.

Finally court records disclose a certificate granted to "Mr. John Wise, Sr." in 1703 for 2100 acres of land for the importation of 42 people, including James and Sarah Lee. Clearly the importation occurred before October 1690/91, when Sarah appeared in court and at a time when she was Sarah Helmot. It was by no means unusual for patents and headrights to be issued years after the events giving rise to them.

During 1700-1701 it can be argued that this James Lee was winding up his affairs in Accomac- no more apprentice, no more lease, and no further records of him in Accomac save the certificate that did not require his presence. There was no more of James and Sarah in Accomac, and at the same time a new

James and Sarah in Bath. If not the same James and Sarah, where did they go? Where did the new family in Bath come from?

The new county of Bath was very much a frontier, attracting a wide assortment of people: scoundrels like Governor Seth Sothel, pirates like Edward Teach, able men with inflated pedigrees like Attorney General and Chief Justice Christopher Gale, violent men like Thomas Dearham, already mentioned and to be mentioned again, and scores of poor, sometimes hardworking people like Stephen Swetman trying to eke a subsistence from land and water, who seldom made it to the public record. And Bath had among its middle and upper classes those who had been small fish in big ponds who found in Bath a small pond in which they could, with a bit of ability and luck, become fish of respectable size.

Onto this stage, no later than October 1701 strode James Leigh, his wife Sarah and six named children, all headrights of Hannah Cockerham. Within a few months, Leigh had purchased the land Hannah had acquired, had acquired other lands on the south side of the Pamlico River and had become a planter.

He must have had some learning and ability, as well as access to influence, because by November 1704 he held a commission as a justice of the peace and consequently was a member of the Court of Pleas and Quarter Sessions. This was the major institution of local government in the Province of North Carolina. It heard civil suits involving limited amounts, and criminal cases involving misdemeanors and lessor felonies. It had jurisdiction over the probate of deeds and wills and the administration of estates, heard appeals from magistrates, and exercised many administrative duties now performed by county commissioners and other local officials. It was the primary interface between citizen and government. James Leigh served as a justice of the County Court from time to time until 1726.

On 16 November 1704 he took his oath as collector of customs "in the rivers of Pamptico and Neuse in the county of Bath" pursuant to a commission from the Commissioners of Her Majesties Customs dated 2 November 1703. By 1704 the colony was collecting duties on the export of deer, bear, beaver, otter, and wildcat skins as well as raw beef and beef hides. Import duties were collected on rum. It is not clear how long Leigh served in that position, but probably no longer than 1708, since by that time trade diminished and there were fewer goods being exported.

James Leigh's acquaintance and friendship with many of the Provinces most influential leaders is apparent. Governor Robert Daniel was a frequent visitor to, and resident of Bath, where he maintained his mistress, Martha Wainwright, and the children she had borne him. It is clear that he was a trusted confidante of Daniel's since in 1709 Daniel appointed him trustee to hold certain lands for Martha and the children, and later appointed him his attorney-in-fact.

Another associate was John Lawson, the explorer, surveyor, naturalist and historian, who was the first victim of the Tuscorora War. He witnessed an affidavit of Lawson's in 1707 and witnessed his will in 1708. He was probably an executor of the will as well, since Lawson appointed the entire County Court. We should also note that Lawson too had a mistress, Hannah Smith, by whom he had children.

One of the results of the various Vestry Acts and the religious squabbling they produced was the so-called Cary Rebellion. Both Governor Daniel and Thomas Cary who succeeded him were ardent Anglicans. Under the Act of 1701 office holders were required to take oaths which Quakers refused to do. They were virtually disenfranchised...or as I prefer, chose to disenfranchise themselves. When Cary became Governor dissenters assumed that the law would not be enforced because Cary was related to John Archdale, the sole Quaker proprietor. In this they were mistaken, and years of civil and religious strife ensued.

1711 was a momentous year in North Carolina-momentous in the sense of 1861, or 1941, or 2001. In that year Edward Hyde succeeded Cary and this brought about armed rebellion by Cary and his supporters. The rebellion ended when Cary fled to Virginia, was arrested and sent to England. Records do not reveal what role, if any, Leigh played during the turmoil although it is probably safe to say that he was an Anglican, since he was a friend of Governor Daniel, and certainly had no qualms about the taking of oaths.

The end of the Cary affair in the summer of 1711 also marked the beginning of a drought that brought serious crop failures. In the same year a yellow fever epidemic struck the colony, but the worst was yet to come.

In the autumn of 1711 the Tuscororas murdered John Lawson and then massacred scores of colonists between the Pamlico and the Neuse. The bloody conflict wiped out entire settlements and eventually led to the elimination of the Tuscororas from eastern North Carolina. James Leigh and his family were affected, of course. Everyone was. But none of his family was killed and if he suffered any losses, claims for them do not survive. However, it has been said that every home on the south side of the Pamlico was destroyed, except for that of Lionel Reading, which was turned into a fort. If that account is accurate, then the Leigh plantation was burned, along with those of his neighbors, the Dearhams, because they lay on the south side of the river.

Leigh's next public service came in 1715 when the General Assembly established the first public library in North Carolina, and appointed him as a trustee. Earlier in the century, the Society for the Propagation of the Gospel had donated a large number of books to St. Thomas Parish and those books became the nucleus of the library. When his estate was inventoried in 1728, he had in his possession "one Great Bible, one Small Bible, two treatises on the Whole Duty of Man, one book entitled the Snake in the Grass, one entitled the Divine Act of Prayer, one of the Society for the Reformation of Manners, the Pilgrims Progress" and several other books. One might wonder if these books were overdue from the library!

There is an interesting series of depositions recorded in Beaufort County that describe a case that came before Leigh in 1721 while serving on the County Court. Captain Roger Kenyon was accused of having fathered a child with Elizabeth Goodin. We can see early on what the defense strategy will be. First William Wragg appeared before Leigh and fellow justice Giles Shute to swear that he had slept with Elizabeth Goodin. Then another man testified to the same effect. Polly Jones, who assisted at the birth, said Elizabeth refused to name the father. Then Giles Shute (recall that he was a judge in the same case) swore that he and Kenyon sailed together from Bath to Core Sound on Christmas Eve 1719, and remained together until their return on 5 February 1720. The child must have been born in October 1720 and the time of

conception must have been January 1720. With an airtight alibi provided by judge, Kenyon was acquitted.

The cases against Sarah Helmot and Elizabeth Goodin are in a small way instructive about how society dealt with these events. Note that Sarah was a servant and no doubt Elizabeth was of the same class. Note too that the mistresses of Daniel and Lawson also bore children out of wedlock but did not find themselves in court. In the latter case, paternity was acknowledged and the children provided for. In the former, paternity was in question and the children could have become a charge on the parish, hence the effort to avoid those costs.

James Leigh was also tangentially connected with another case that even today elicits interest fm historians. One early Bath character was Thomas Dearham, who had married Elizabeth Rogers. In 1702 he was convicted of manslaughter, having beaten another man to death with a cat of nine tails. He was sentenced to be branded on the thumb with an "M" for manslaughter. The sentence seems light to me but since he could read, he claimed "benefit of clergy" in order to delay or avoid punishment while the appeal was heard in England. He gambled and in a perverse sense won, since he died in 1707, before the appeal was concluded.

What has this to do with James Leigh? Recall Hannah Cockerham brought Leigh to Bath. Thomas Dearham's wife, Elizabeth, was Hannah's sister. But the Leigh connection is much closer. In a 1716 lawsuit over a horse, a witness testified that "he heard Mrs. Dearham, now the wife of James Leigh, say that she heard Thomas Martin agree...to carry...a horse up to Taylor Creek and that the Indians being broken out, when they came to the creek...the Indians shot after them so that the mare threw her rider and got away..." From this we learn that Sarah has died, James married the widow Dearham, and that Indians could be a threat even after the Tuscorora War. About 1720 Elizabeth died and James married a third time, to the widow Ann Darden, who outlived him.

In 1726 Leigh made his unwitting way into a Church of England record, when the rector of St. Thomas parish sought £80 from the SPG. He sent a petition ostensibly from the vestry and wardens seeking support for "our pious and exemplary minister". The first signer was James Leigh, "Judge of the Court". Of the other thirteen signers, only one other was identified by a title...Robert

Peyton, baronet. This document appears in Volume 10, Colonial Records of North Carolina, 2d series with the note: "the names appended to the document appear to be forgeries." One of the problems is that while Leigh was a judge, Peyton was not a baronet. I am also informed that when known signatures of the signers were compared with the document itself, they were obviously not the same. One is left with the impression that the "pious and exemplary" Rev. Bailey was trying to pull a fast one on the SPG. He was likely unsuccessful, since Church of England clergy in North Carolina were notoriously undersupported.

James Leigh's final public service came in 1727 when he became a justice of the General Court of Oyer and Terminer. That court was the highest court in North Carolina and included every county in its venue. It sat in Edenton and had exclusive jurisdiction over civil suits involving values over L50 and over felonies punishable by death or by "the loss of a member". It also heard appeals from the county courts and was presided over by a Chief Justice. There was no court in the Colony superior to it, and Leigh's appointment to it capped a long and useful career of public service to Bath County and to the Province of North Carolina.

In his private life, James Leigh was a planter whose lands were located on the south side of the Pamlico River between South Dividing Creek (now called South Creek) and James Leigh's Creek, now called Lee Creek, which today is the site of the Texasgulf phosphate mining facility. From his estate inventory it is clear that he was economically and socially of the class that provided leadership in the Province. In addition to the large number of books in his library, he also owned a sword (a weapon carried by "gentlemen"), a cutlass, a walking cane, a beaver hat, a pistol, tomahawks, and a substantial quantity of clothing, household furnishings, plus the aforementioned bolts of cloth, buttons, and other goods. Several rooms in his home are mentioned: the parlour, hall, chamber, kitchen, cellar, dairy, cockloft, barn and milkhouse. He also owned a considerable herd of horses, cattle, sheep and hogs. When he died in the fall of 1728, his life in North Carolina had spanned the last half of the Proprietary years, and the Province's most turbulent to that time.

So here we have James Leigh- a typical self-made man of Bath- planter, collector of customs, Justice of the Peace, judge of the County Court, trustee of the first public library and Justice of the General Court. Most importantly he was a survivor of famines, plagues, Indian and civil uprisings and the political

and religious quarrels of the day. He left surviving a number of children whose descendants continue in North Carolina to this day, but he is generally unknown both to them and to history.

By that I mean that when I compare him with his associates, he is totally ignored. William S. Powell's Dictionary of North Carolina Biographies illustrates the point: We might expect to find Governor Daniel, John Lawson and Chief Justice Gale there and we do. But of those who served with him on the General Court, four (Gale, Thomas Luton, John Alston and Thomas Lovick) are represented. Only Leigh and Thomas Speight are not. Even Robert Peyton, who witnessed Leigh's will, gets an entry, but not James.

I am pleased to have inducted you into an elite few who now know more than anyone else, and more than you ever wanted to know, about James Leigh, a North Carolina pioneer.