

**THE BENCH AND  
BAR OF THE SOUTH  
AND SOUTHWEST**

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The bench and bar of the South and Southwest by Henry S. Foote

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## PREFACE.

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The unpretending volume which is now about to make its appearance in the world of books owes its origin to the following circumstances. The worthy editor of the *SOUTHERN LAW REVIEW*, with whom I had not at the time the honor of a personal acquaintance, towards the close of the last winter requested me, by letter, to write something concerning the "Bench and Bar of the South and Southwest," accompanying the application with a statement that he had been induced to open this correspondence with me by seeing, a few months previous, an article in one of the newspapers, over my signature, from which he had derived some entertainment. To this complimentary request—though much occupied with other engagements—I could not refuse my assent. How the first of the articles transmitted by me to St. Louis was followed by a second, third and fourth, and in what manner enough was written by me to fill a book of the present dimensions, will sufficiently appear hereafter. Meanwhile, the light and hastily prepared article which had thus favorably attracted the notice of Mr. Thompson will be here set forth:

"In former days, during the earlier years of Mr. Madison's memorable Administration, that interesting portion of the present State of Louisiana which lies contiguous to the frontiers of the then Mississippi Territory, was far from being in as peaceful and undisturbed condition as it should have been. The Spanish authorities evinced much reluctance to yield up to the Anglo-American race the beautiful and fertile region which Mr. Jefferson had so dexterously acquired at the hands of the First Consul of France, in the year 1803. Collisions of a very serious character were constantly occurring between citizens of the United States on one side of the dividing line, and the earlier Spanish and French settlers on the other. The

volumes of the American State Papers of that period abound with the most thrilling and disgusting recitals of murders, robberies, and even crimes of a more shocking character still. The surface of the *debatable* ground in the neighborhood of Baton Rouge, though in ostensible possession of the Spaniards, and yet called West Florida, was already crowded with enterprising colonists from the United States, who were eagerly awaiting such action on the part of the peace-loving American Government as would enable them to realize the large fortunes which many of them had confidently expected to obtain as the reward of removal from their former homes. At length the patience of this enterprising class was exhausted by long delay and multiplied sufferings at the hands of the corrupt and tyrannical Spanish officials, and they resolved to improvise a sort of *coup d'état*. About the year 1810 (as my very respectable informant assures me) a meeting of American residents was called in the town of Baton Rouge, upon a certain bright Monday morning, and a number of resolutions were offered and unanimously adopted, declaring the *termination of Spanish rule*, and providing for the immediate establishment of a republican government. These resolutions prescribed that the new state or commonwealth should be called the 'State of Florida;' that one Fulwar Skipwith should be the Governor thereof for the time being; that a court should be forthwith organized under the name of the 'Court of Florida,' to be composed of three justices, of which the same Fulwar Skipwith was to be one; and that this court should hold its first session the very next day at eleven o'clock, A. M., precisely, and within the precincts of a certain well-known log tenement situated about the centre of the town. In this court was to be concentrated all the judicial power of the infant State; and the two remaining judges thereof were likewise specified by name in the resolutions which, until further arrangements could be made, were to be recognized as constituting the organic law of Florida. One of the last mentioned judges was a wealthy planter in the vicinage, of known moral worth and of many amiable attributes besides. The third was a noted personage then dwelling in Baton



Rouge, once commanding a small vessel in the American service, who was reputed to have in that capacity evinced no little energy, and to have been particularly effective in all matters of marine discipline needful to be enforced by the *cat-of-nine-tails* and other kindred instrumentalities.

"Fulwar Skipwith was a man of no little note. He was a native of Virginia, and was quite celebrated for his high-bred courtesy, his general literary accomplishments, and his splendid style of living. He had been for many years American Consul in France, at one of its most commercial cities, had performed the duties attached to that position in a most creditable manner, and had returned to the United States with an elegant and accomplished French wife, (whom many years ago I personally knew,) bringing back with him also French *politesse* and French notions and habits. He was on intimate terms with Mr. Jefferson, and had corresponded with him freely upon many subjects, subsequent to the return of this illustrious American statesman from his mission to the Court of Versailles.

"Well, at the hour agreed upon for the assemblage of the judges mentioned, Fulwar Skipwith drove into Baton Rouge from his palatial residence in the country, in a splendid coach and four, with outriders and lackeys to match; and, on reaching the front of the hall of justice, found it surrounded by a multitude of his enthusiastic and aroused countrymen, who received him with loud and oft-reiterated huzzas. He descended majestically from his carriage, arrayed in costly habiliments of undoubted Parisian cut, and strode slowly, and, it must be confessed, somewhat ostentatiously, towards the open door of the court-house, bowing, as he moved along, to the right and to the left, alternately, with as much of mingled grace and majesty as Louis le Grand himself could have brought into requisition. When he got within the door, he saw in the back part of this most uncourtly edifice three plain straw-bottomed chairs, which had been placed upon a platform of singularly rude construction, raised about two feet above the level of the floor. In the central one of these he bestowed his prepossessing person, and awaited silently the

coming of his official *confreeres*. The first of these that appeared was Mr. Thomas. Being a singularly modest and retiring person, this gentleman waited at the door for a moment, not knowing precisely where he was to sit. Upon observing this, Mr. Skipwith leaned forward and beckoned him to advance, which he did, and presently took the chair on the right of Mr. Skipwith. After an exchange of the usual salutations, the latter observed, in a singularly bland and winning manner, that he presumed that little could be done by the court for the present beyond getting organized and appointing a chief justice; 'to-morrow,' said he, 'we can proceed to administer the justice of the land.' To this Mr. Thomas deferentially assented, adding: 'Of course, Mr. Skipwith, you, who have had so much and such varied experience, will have to act as our chief justice.' 'As to that,' said Mr. Skipwith, 'neither seeking nor declining such a signal honor, I shall be content to conform to the wishes of my respected associates.' A noise was presently heard outside the door. The third judicial magnate had arrived. He had walked more than a mile from his own habitation to the place of concourse. The newcomer was dressed out in a full suit of naval uniform rather the worse for wear. His large, capacious head was surmounted with a cap and feathers, a good deal soiled, but of a very menacing aspect. A rusty sword hung at his side. The weather being quite warm, the perspiration was flowing freely down his plump and rosy cheeks, which he was diligently wiping away with a crimson bandanna handkerchief. His hand held a heavy cane, terminating in a sharp iron spike, with which he rapped emphatically upon the resounding plank floor, as he advanced unceremoniously and sat down heavily in the vacant chair upon the platform. So soon as he had cleverly composed himself therein, Mr. Skipwith, with somewhat increased courtesy, made the same suggestion to which Mr. Thomas had already responded so civilly. Upon this, up rises the personage just described, (but whose surname I have really quite forgotten,) and thus vociferated, in a most stentorian voice, accompanied with a suitable rapping of his cane upon the platform: 'Oh! if that is the question to

be decided, that's — easily settled; I'm chief justice of *this* court, by —.' To this Skipwith mildly answered that if he claimed the position referred to, he should himself be far from holding controversy with him upon that point. Then the self-constituted chief justice, seeing the sheriff of the parish in court, addressed him in the same grand and imposing manner, asking what prisoners he had in jail, and what were their offences. To this enquiry the sheriff responded that there were several men in his custody charged with minor offences, and one man accused of murder, but against whom no indictment had been yet found. 'Bring out the fellow charged with murder,' cried this modern Jeffries; 'I wish to try my hand upon him immediately. I intend to show all such ruffians that no man is hereafter to be killed in this parish except with the consent of this court first had and obtained.' He then resumed his seat. In a few minutes the sheriff reappeared, driving before him a pale, wretched looking man, whom long confinement and other sufferings had reduced almost to a skeleton, and deprived well-nigh altogether of the power of locomotion. Upon beholding this ghastly apparition, up rose the chief justice again, and staring at the prisoner ferociously, he propounded this astounding interrogatory: '*What have you to say why sentence of death should not be pronounced against you?*' The poor creature, frightened almost to death, and trembling from head to foot, feebly answered: 'I have employed this lawyer to defend me,' pointing to a good-looking and neatly-dressed young man who was standing near him, and with whom I became acquainted about twenty years after, as Judge Turner, presiding with much dignity in the Criminal Court at New Orleans. This reply of the prisoner greatly increased the rage of his official interlocutor. Staring angrily at the mild and amiable-looking attorney, he broke forth in a voice of thunder: 'Oh, by —! none of your *quirks* or *quibbles* of the law!' Then turning to the prisoner, and stretching forth his long and muscular right hand, with the fingers thereof closely adhering to each other, he said: 'If you are guilty, which I have good reason to believe, I'll be — if you slip through these