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and the Original Bridge to Nowhere

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The King of Rockingham County and the Original Bridge to Nowhere

On October 15, 1929 Horace Williams, the University of North Carolina's famed professor and founder of its philosophy department, wrote a letter to his friend and former student, Judge John J. Parker of the Fourth Circuit Court of Appeals of the United States, asking, "I have had in mind for some time to write and ask for copies of one or two of your decisions. It is stimulating to read them, also they give me pleasure."¹ Parker wrote back eleven days later with a copy of his recently published opinion in *Rockingham County v. Luten Bridge Co.*

Williams, who taught a course on logic to generations of UNC undergraduates, including Parker, and was an enthusiast of logical reasoning, was thoroughly impressed with Parker's work. He wrote back effusively, "There is something in your manner of reaching a decision that reminds me of Marshall. It is the analysis. If I had made a decision in the lower court on this case, then read your analysis, I should

* This chapter is adapted from *A Bridge, A Tax Revolt, and the Struggle to Industrialize: The Story and Legacy of Rockingham County v. Luten Bridge Co.*, 84 N.C.L. Rev. __ (2006)

¹ Letter from Horace Williams to John Parker (Oct. 15, 1929), in John J. Parker Papers at Box 23, Folder 426 (Southern Historical Manuscripts Collection, University of North Carolina, Chapel Hill, NC).

resign.”² Indeed, since its publication in 1929, the opinion has proceeded to leave an impression on generations of law students. *Luten Bridge*, a staple in most contracts casebooks, is known today as the paradigmatic case that demonstrates the duty to mitigate damages in contract law, whereby a nonbreaching party is not compensated for performance that occurs after the other party announces an intention to breach. But no matter how impressive the analysis, neither Williams nor Parker had any reason to suspect that *Luten Bridge* would reach generations of contracts students, for the case only tangentially involved a dispute over contract law.

When sending his *Luten Bridge* opinion to Williams, Judge Parker remarked that it was “a case involving an important question of county government in North Carolina.”³ This chapter revisits the history of this famous case and reveals that Parker was exactly right—the core of the dispute was not over the calculation of damages for contract breach but instead implicated important issues in local government law. Moreover, those legal issues were of great importance to Parker and his fellow North Carolinians at the time the case was decided. They reflected the new challenges to local governments as industrialization took hold, and they demonstrate how legal rules played a significant role during that seminal historical era.

This chapter takes on three objectives: it identifies the case’s original importance, uncovers the opinion’s political and jurisprudential significance, and tells a remarkable story, one that arose within a heated tax revolt pitting the county’s farmers against its most celebrated industrialist. Much more than a crisp illustration of the duty to mitigate, *Rockingham County v. The Luten Bridge Co.* offers a window into a southern community’s struggles with a divided social order, the introduction of wealth into local politics, and a changing economy.

A View from the Casebook

The case taught in most first-year contracts courses and textbooks goes as follows. On January 7, 1924, the Board of Commissioners of Rockingham County decided by a three-to-two vote to award a contract to the Luten Bridge Company to build a bridge over the Dan River. The opinion notes that “[m]uch feeling was engendered over the matter” and that a “result” of the vote was that W.F. Pruitt, one of the commissioners who had voted in favor of the project, resigned on February 11, 1924. The next day, the County Clerk appointed W.W. Hampton as a

² Letter from Horace Williams to John Parker (Oct. 31, 1929).

³ Letter from John Parker to Horace Williams (Oct. 26, 1929)

member of the board to succeed him, and on February 21, Hampton and the two commissioners who opposed the contract passed a resolution “declaring that the contract for the building of the bridge was not legal and valid, and directing the clerk of the board to notify [the Luten Bridge Company] that it refused to recognize same as a valid contract, and that [the Company] should proceed no further thereunder.” But, “notwithstanding the repudiation of the contract by the county, the bridge company continued with the work of construction.” On November 24, 1924, the Luten Bridge Company sued Rockingham County for \$18,301.07 for its completed work on the bridge even though the company’s incurred costs as of February 21 were estimated at only \$1900.

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

In the case at bar, the county decided not to build the road of which the bridge was to be a part, and did not build it. The bridge, built in the midst of the forest, is of no value to the county because of this change of circumstances. When, therefore, the county gave notice to the plaintiff that it would not proceed with the project, plaintiff should have desisted from further work. It had no right thus to pile up damages by proceeding with the erection of a useless bridge.⁴

And thus, *Luten Bridge* has come to illustrate the duty to mitigate damages.

A Tale of a Bridge

The central figure in Rockingham County’s decision to build a new bridge at Fishing Creek, near the three mill towns of Leaksville, Draper, and Spray, was Colonel Benjamin Franklin Mebane, Jr. Throughout the first quarter of the twentieth century, Mebane, a flamboyant industrialist living in a changing South, was the undisputed king of Rockingham County. In his time, Mebane’s power and notoriety seemed limitless, with one contemporary saying:

It is quite safe to say that no story-book hero ever has a more romantic history than B. Frank Mebane, industrial tycoon, town builder, millionaire, philanthropist, and patron of the

⁴ *Rockingham Co. v. Luten Bridge Co.*, 35 F.2d 301, 307 (4th Cir. 1929).

arts. He was the most fabulous and colorful character to appear on the Leaksville community scene during the life of the town, and its mightiest personal force for a generation.⁵

Mebane exploited this power and his oversized personality to reign supreme over a wide variety of local industries. The Rockingham industrialist's vast enterprises included raising cattle, running a variety of publishing companies, managing the Imperial Bank and Trust Company, and establishing the Spray Institute of Technology. But Mebane's primary enterprise, and the one in which he left an indelible imprint on the county, was textile manufacturing. In 1893, the same year he charmed and married Lily Connolly Morehead, the granddaughter of former North Carolina governor and textile industrialist John Motley Morehead,⁶ he bought 600 acres of land in Spray, in northern Rockingham County, with the ambitious goal of building one new mill in the area every year. Mebane did not achieve this goal but he came close, building six new mills by 1905 and employing nearly all of Spray's 5000 residents in some capacity. During his reign, Mebane saw northern Rockingham transform from a sleepy rural community into a thriving industrial center, featuring new factories, roads, and bridges. Indeed, much of Rockingham County's growth was a byproduct of Mebane's own industry.

Even as the price of expansion caught up with him, forcing a declaration of bankruptcy in 1910, Mebane's aspirations continued to grow in ambition and audacity. Mebane's next plan, developed in the early 1920s, was to build a massive chemical factory in "the Meadows," a large series of fields that Mebane's Spray Water Power & Land Company owned between Spray and Draper. However, Mebane's oversized dream, which might also have included attracting new residents near the chemical factory and laying the foundations to a new town, was hindered by the lack of infrastructure in the immediate area. At the time of Mebane's initial scheming, the only modern bridge across the Dan was the Highway 87 bridge (scheduled to be completed in 1924),

⁵ C. P. Robertson, *A Character Sketch of B. Frank Mebane* (1955), reprinted in 29 *J. Rockingham County Hist. & Genealogy* 25, 26 (2004). Though Mebane was educated at the Bingham Military School, in Mebane, N.C., he never served in the military and earned the nickname "Colonel" from his friends.

⁶ Though the Moreheads were rich and powerful, the family legend has it that Mebane met Lily at an auction featuring many items that originally belonged to the Morehead family, which had fallen on hard times. Seeing an opportunity to impress the beautiful young woman, Mebane said to her, "Ma'am, you'll not lose a thing at this auction today," bought all of her possessions, and then promptly returned them to her.

which was one and one-half miles upstream from the Meadows. To get to the bridge and across the Dan from the Meadows, one would have to take the cumbersome path through the towns of Spray and Leaksville. Seeking to facilitate this route, Mebane decided an additional bridge should be built, this one near the confluence of the Dan River and the Fishing Creek.⁷

Even though Mebane would be the primary beneficiary of the new bridge, he considered the project to be part of the county's larger plan for industrial growth and thought the county should pay for it. So in 1922, Mebane, himself an avid Republican in heavily Democratic Rockingham County, recruited three Democrats to support his industrial agenda and run for the county's Board of Commissioners: Josiah Ferre McCollum, Thomas Ruffin Pratt, and William Franklin Pruitt. Both Pruitt and McCollum were farmers, Pratt was a local merchant, and all three were late in years. Newspapers later reported that Mebane royally entertained the three at his lavish home, romancing the modest men with his wealth and personal charm, and persuaded them to align their interests with his own. His appeal was successful, and all three signed on to Mebane's plan.

Mebane quietly helped Pratt, Pruitt, and McCollum get elected to the five-member Board of Commissioners in the 1922 election along with two other Democrats—R.B. Chance and J.R. Martin. Pratt, Pruitt, and McCollum promptly initiated Mebane's bridge plan, issuing a proposal to build a new bridge near Mebane's Meadows property. Chance and Martin, however, were quite reluctant to fund the project, especially since another bridge would soon be completed only a mile and a

⁷ It is possible that Mebane demanded the new bridge in order to have efficient access to Reidsville, the County's largest city and home to a railroad depot, so raw materials and manufactured products could be transported into and out of the Meadows' factories. However, nearby Leaksville and Spray had railroad depots as early as the 1880s. Mebane feuded frequently with the railroad operators, who did not offer him the discounts he demanded, and at one point Mebane founded the North Carolina-Virginia Railroad simply to challenge the railroads' pricing policies. But road access to Reidsville would not have posed an effective challenge to the railroads in Leaksville and Spray in the 1920s. Perhaps Mebane accurately foresaw the time when trucks would replace railroads. This conjecture all indicates that it is not entirely clear why Mebane pursued the expensive bridge. Indeed, a local Rockingham County historian recently concluded that Mebane's true plan was "never released to the public and is still unknown to this day." Bob Carter, *The Bridge to Nowhere: The Great Mebane's Bridge Controversy*, 29 *J. Rockingham County History & Genealogy* 1, 4 (2004).

half upstream. Initially, the three Mebane loyalists were undeterred. In a March 19th, 1923 resolution, introduced by Commissioner W.F. Pruitt, the Board of County Commissioners deemed it “a public necessity” to build a bridge across the Dan River near its juncture with the Fishing Creek.⁸ The proposal, receiving the support of Commissioners Pratt and McCollum while confronting strong opposition from Commissioners Martin and Chance, authorized the Board to spend \$50,000 on the bridge and to employ an engineer to lead the construction effort. At the same meeting, the Board (led by Mebane’s Commissioners) voted 3-2 to build a hard surface road from the town of Madison to Settle’s bridge at an additional cost of \$250,000—this second project has been described as Mebane’s bait to get support for his bridge plans from western Rockingham County, or a payoff to Pratt who lived in Madison. Neither of those dollar figures, however, included the additional \$100,000 that would be needed to build a road to and from the Fishing Creek site—the bridge plan was initiated without a plan to provide road access.

These very substantial public expenditures were unprecedented for Rockingham County and forced dramatic changes in the county’s finances. The County Commissioners raised county property taxes to bankroll much of these new public works projects, and in 1923 alone increased county taxes from 0.95 percent to 1.35 percent, with 0.30 percent designated as “road taxes.” The Commissioners also issued new bonds at significant interest rates, increasing the county’s debt by nearly one-third and leaving Rockingham County in 1925 with the third-highest indebtedness of North Carolina’s ninety-eight counties. Some feared that if these public expenditures continued unabated, financing the debt taxes would require a tax hike rise to 2.7 percent, which would be the highest in the state.

The rising taxes, and the apparent cronyism behind the projects they financed, quickly drew the ire of many of Rockingham County’s citizens. The heavily Democratic county was like many Democratic bastions of the time in the South, comprised primarily of rural voters opposed to government spending on public works and generally hostile to taxes, especially property taxes. Moreover, the Board of Commissioners had been elected in 1922 on a platform of fiscal restraint, so the additional spending was seen as both extravagant and a breach of the voters’ trust. *The Reidsville Review*—the county’s largest newspaper—also joined the opposition, launching repeated attacks on the Commissioners that supported Mebane’s plan. The newspaper, reflecting the

⁸ Meeting Minutes from the Rockingham County Bd. of Comm’rs (Mar. 19, 1923).

political preferences of county Democrats, warned “taxpayers [should] sit up and take notice—said to be only a start of some great program of county expenditures.” And suspecting Mebane’s role behind the plan, *The Review* added “it is pointed out that the new bridge is not needed for public traffic and it is freely asserted that it will be built solely for the benefit of a very few private property owners.”⁹

The Opposition Takes Shape

Mebane’s opponents first launched a legal attack on the project. A group of local lawyers—acting “on their own part as citizens and taxpayers of Rockingham County, and on the part of all other citizens and tax payers”—filed for an injunction in state court to prevent the County Board from entering into a contract to build the proposed bridge. The bill of complaint went on to state that the bridge was being built:

for the benefit largely of one person, solely, and at his demand and request . . . ordering said bridge to be built is a flagrant abuse of the discretion vested in said Board of Commissioners by law, and is in violation of the rights of each plaintiff and all other taxpayers of said county and this action is brought for the purpose of restraining said Board of Commissioners from proceeding with the construction of said bridge and road . . .¹⁰

The complaint successfully convinced Judge H.P. Lane of North Carolina’s 11th District Court (and a native of Leaksville) to impose a temporary injunction to prevent the County Board from entering into a contract to build the Fishing Creek Bridge. The County appealed, and Superior Court Judge Thomas J. Shaw overturned the injunction, declaring that the county’s elected officials could decide matters of public expenditures as they saw fit. With preemptive legal options exhausted, opponents of the bridge opted instead to arouse political pressure and called for a series of “mass meetings” to organize and defeat the Mebane plan. These mass meetings were each held at the county courthouse in Wentworth and open to all citizens who, as the *Leaksville News* reported, were encouraged to “let everyone come and show by your presence the interest you feel in your county and the expenditure of your money.”¹¹

Three mass meetings were held in the summer of 1923 and were organized by a “Citizens’ Committee,” led by R.S. Montgomery, a promi-

⁹ *County Fathers Start Something!*, Reidsville Rev., March 26, 1923, at 1.

¹⁰ *Judge Grants a Temporary Injunction*, Reidsville Rev., May 9, 1923, at 1.

¹¹ *Mass Meeting at Wentworth*, Leaksville News, Apr. 4, 1924, at 1.

ment Reidsville businessman, owner of farmland, president of Rockingham's First National Bank, and Director of the 11th district of the Tobacco Grower's Association.¹² Meetings drew residents from across the county, packing many as 2,000 people into the 600-seat courthouse, and were scheduled to coincide with meetings of the County Commissioners. Speakers used the mass meetings to gather information from across the county (they conducted informal polls of public opinion, which consistently claimed that 95 percent of the electorate in Rockingham County was opposed to the bridge), channel organizational force into their opposition, and send coherent messages—and unveiled threats—to the County Commissioners.¹³ But the meetings primarily served as a device through which the county's irate farmers and indignant politicians could express outrage at profligate government spending.

Yet while the first two mass meetings focused on sentiments that the bridge was a poor use of public dollars, with additional anger at rising taxes, it was at the third mass meeting that public opposition struck a theme that elevated its cause. The theme was captured by A.D. Ivie, an eloquent attorney and former North Carolina State Senator who earlier had represented B. Frank Mebane in business affairs. Ivie, standing before the overflowing courthouse in North Carolina's summer heat, told the angry crowd:

There has been established and is now existing in Rockingham county an invisible government, dominated and controlled by one individual, administered from the dark, based upon the same arbitrary, autocratic, and imperialistic principles as those put forth by George III of England and William II of Germany. So bold and notorious is this invisible government established and maintained in the interest of special privilege and the con-

¹² As an owner of farmland, Montgomery chiefly identified with interests south of the river and was resistant to public expenditures to build up Mebane's industrial base at the expense of the entire county. He was described by the *Reidsville Review* as a "tower of strength" and "a conservative, level headed business man." *R.S. Montgomery New Director*, *Reidsville Rev.*, May 14, 1923, at 1.

¹³ At both the second and third mass meetings, the Citizens Committee demanded the resignations of the three pro-bridge County Commissioners, and overtones of violence began to emerge. The *Reidsville Review* reported that organizers planned to have a "committee" of fifty men visit the three pro-bridge commissioners and refuse to leave until the bridge issue was settled. It was also at this time that reports surfaced that at least two of the three commissioners began missing County Commissioners meetings due to illness.

duct and relationship and domination of certain officials of the county and particularly three commissioners that the people feel that a further submission, thereto would be a sacrifice and surrender of the sacred principals of government vouchsafed by the blood of our fathers.¹⁴

Ivie's rhetoric transformed the opposition from angry taxpayers—the proverbial peasants with pitchforks—into citizens demanding government accountability, transparency, and integrity. The uprising now focused on the very legitimacy of its county government, which citizens had felt was usurped by a local tycoon. Ivie concluded his oration by urging the citizenry to “pledge each to the other, and to the people of Rockingham county, our every power to the overthrow of this invisible special interest . . . and restore to the people their government!”

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

A Contract, a Company, and a Divided County

Public opposition throughout 1923 was sufficiently fierce that by January of 1924, many people in Rockingham County assumed that Mebane's bridge would not be built. Then on January 7, 1924, in what the *Reidsville Review* described as “a bolt from the clear sky,” the Board of County Commissioners voted to approve the construction of a bridge, to be known as the Fishing Creek Bridge. A contract in the amount of \$39,670 was awarded to the Luten Bridge Company of Knoxville, Tennessee, calling for the bridge company to

furnish material for and to construct complete and ready for traffic, a reinforced concrete bridge over Dan River, near Fishing Creek, of three arches 105'0” each with 18'0” roadway In consideration of the forgoing, the [county] hereby agrees to pay the [bridge company] the sum of Thirty Nine Thousand six hundred and seventy five \$39,675.00 as follows, on monthly estimates made up by the County Engineer and to be paid at the regular meeting of the Commissioners at their meeting the first Monday in each month

¹⁴ *Resolutions by Mass-Meeting*, Reidsville Rev., July 4, 1923, at 4.

Voting in favor of the contract were Commissioners Pratt, Pruitt, and McCollum and voting against were Commissioners Barber and Martin.¹⁵ Rockingham County had made a contract with the Luten Bridge Company.

The contract was another in a long line of transactions between southern communities and the Luten Bridge Company. The Company, based in Knoxville, Tennessee, built a significant number of bridges throughout the South in the first half of the twentieth century, many of which still stand today.¹⁶ The company was one of several in the country with the name “Luten Bridge Company,” all named after Daniel B. Luten, a professor of engineering at Purdue University who created and patented an arch-based design for reinforced concrete bridges.¹⁷ By 1920, over 17,000 bridges nationwide were built in the United States with Luten’s arch-based design, and the Luten Bridge Company of Knoxville—which had experience dealing with county governments and less-than cooperative citizens—viewed this as a routine contract with a community.

County residents, however, met the news with public outcry, and political pressure swelled to fever-pitch as the parties entered February 1924, which would prove to be the pivotal month for the bridge debate. On February 11, 1924, W. Franklin Pruitt sent a letter of resignation from the Board of County Commissioners to Hunter K. Penn, the Rockingham County Clerk:

As my health has so failed me that I fear that I cannot attend the meetings of the Board of Co. Commissioners as I should have and feeling that it would be to the best interest of my

¹⁵ After losing the vote, Martin and Barber proposed that the bidding process should be reopened, arguing that the Luten Bridge Company’s bid had been submitted to the county on July 2, 1923 and that circumstances had changed in the meantime, such that the contract price was outdated. That proposal was rejected, again in a 3–2 vote.

¹⁶ Many of the remaining Luten-designed bridges are reaching the end of their life cycle, forcing state and local officials to choose between replacing the bridges with newer models or restoring the historic spans. For example, the Worsham Street Bridge in Danville, Virginia, (located only 25 miles from the Fishing Creek Bridge) has been the subject of a heated political dispute, pitting historical preservationists against developers and city planners.. See Emyl Jenkins, *Worsham Street Bridge Update*, *Evince Magazine*, July 2004, at 13.

¹⁷ Professor Luten himself had no proprietary stake in any of the firms that bore his name, but he received lucrative royalties from licensing his patented design. Luten himself worked instead for the rival National Bridge Company, which he founded in 1902.

health I hereby tender my resignation as a member of said Board, my resignation effective at once. I have desired to do my duty as one of the Board, and do hope that a good man will be chosen as my successor.¹⁸

Pruitt, however, promptly reconsidered and, that same afternoon, telephoned the Clerk's office requesting to rescind his resignation. He later explained, in a remark that suggests Mebane's forceful hand, that "friends" had "urged upon [him] that it was his duty to remain faithful to the County interests to which he had been elected." Pruitt then sent a letter the same day, addressed to the Board and sent to Clerk Penn, saying that "after due consideration I request the Board not to take any action on [the resignation], and I still consider myself a member of said Board."¹⁹

Penn disregarded both Pruitt's call and letter and instead accepted Pruitt's resignation. The next day, Penn wrote to W.W. Hampton, a Leakesville businessman, appointing him "as a County Commissioner for Rockingham County to fill the unexpired term of W.F. Pruitt, resigned." Hampton was described by the *Reidsville Review* as "a dyed-in-the-wool democrat" and "a booster at all times for this great county."²⁰ His loyalties to the county's Democrats ensured that Hampton would oppose construction of the bridge, thus changing the balance of power on the five-member Board.

For the following eleven months, both Pruitt and Hampton claimed to be on the County Board of Commissioners, leaving the actual membership of that body in dispute. But while Pruitt continued to claim a place on the Board, he, Chairman Pratt, and Commissioner McCollum stopped attending Board meetings. The three men met only one more time, towards the end of 1924 as a shadow Board of Commissioners, without the other members, solely to discuss the lawsuit later filed by the Luten Bridge Company against the County and the commissioners. Pratt and McCollum explained their own continued absences from their rightful place at the board meetings with claims of poor health.

¹⁸ Transcript of Record at 34, *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301 (4th Cir. 1929) (No. 2873). Pruitt later testified that he resigned "on account of local political dissensions in the County [and that] certain disorderly elements of the county sought, by intimidation, threats and mob action to intimidate the Commissioners and prevent the Commissioners from going ahead with the contract."

¹⁹ *Id.* at 21.

²⁰ *Commissioner Pruitt Resigns; Will Hampton Sworn in This Morning*, *Reidsville Rev.*, Feb. 13, 1924, at 1.

Meanwhile, the anti-bridge Commissioners—Martin, Barber, and Hampton—immediately asserted control over Rockingham County matters and started implementing a traditional Democratic agenda. In its first meeting, on February 21, 1924, the newly constituted Board agreed to cut spending projects throughout the county, promptly resolving that the Fishing Creek Bridge was “not in the public interest, but on the contrary against the public interest.” As such, they ordered the clerk to notify the Luten Bridge Company that the county “refuses to recognize the said paper writing as a valid contract and to advise said Bridge Company to proceed no further thereunder”²¹ These three commissioners continued to meet every two weeks at the county courthouse in Wentworth to conduct the county’s business, including the many mundane matters of county governance that had nothing to do with the bridge controversy. In total, the three men met as the Board of County Commissioners twenty-five times between February 12 and December 1, 1924.

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

[A]ny and all work or expense incurred by it in regard to said bridge will be done by it at its own hazard and risk. The contract with the Luten Bridge Company for the construction of this bridge is not a valid and legal contract as heretofore expressed by resolution of this Board, but if this board should be mistaken about the legality of said paper writing, this Board does not desire to construct this bridge and will contest the payment for same if constructed.²²

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

²¹ Meeting Minutes from the Rockingham County Bd. of Comm’rs (Feb. 21, 1924).

²² Meeting Minutes from the Rockingham County Bd. of Comm’rs (Mar. 3, 1924).

by themselves and the commissioners.”²³ Some believed that the reason the bridge company continued to build was that B. Frank Mebane promised to pay for the bridge if the company was unable to secure payment from the county. Indeed, years after the incident, it was discovered that Mebane personally gave the Luten Bridge Company \$25,000 in Liberty Bonds to continue building the bridge. Mebane, with all he had invested in the bridge to this point, remained determined not let his bridge die.²⁴

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

We are unable to agree with you that this contract is for any reason invalid or illegal, and we cannot consent to its rescision [sic] or cancellation or to any other conduct upon your part which will excuse you from the full and complete execution and compliance therewith upon the part of the Board of Commissioners of Rockingham County. We have already assembled a lot of material, organized our forces and performed a portion of the contract. It shall be our purpose to live up to and carry out the contract upon our part, and this is to advise you that we shall expect you to do the same upon your part and that we will be paid by the county in accordance with the contract for the material and work done by us in the completion of the construction of the said bridge. We shall proceed at once and vigorously the construction of this bridge in fulfillment of our contract with full confidence that the county will fulfill its part and pay for the same.²⁵

²³ *A Tale of a Bridge (Series No. 18)*, Tri-City Daily Gazette, Mar. 8, 1924, at 1.

²⁴ Mebane’s determination to build the bridge resembled the same cavalier spirit that led to his earlier bankruptcy. His injudiciousness in pursuing the bridge project led many to name the bridge, “Mebane’s Folly.”

²⁵ *A Tale of a Bridge (Series No. 20)*, Tri-City Daily Gazette, Mar. 12, 1924, at 1.

The Luten Bridge Company and the three opposing commissioners continued to play a slow-paced cat-and-mouse game throughout the spring and summer of 1924. After each Board of Commissioner meeting, the Board passed a resolution, and gave notice to the company, decreeing that the county refused to meet its end of the contract. Meanwhile, County Engineer J.S. Trogdon came to the courthouse each month, in accordance with the contract, with a new estimate of what the county owed the Luten Bridge Company, and every month the county rejected the bill on its face. County Attorney P.W. Glidewell, who would later help Pratt, Pruitt, and McCollum with their response to the Luten Bridge Company's suit against the commissioners, resigned from his post, and the county's residents grew increasingly divided.

Rhetorical attacks became more vicious as well, as each side of the bridge debate tried to lay the blame for the struggle on divisive figures. Those opposed to the bridge vilified B. Frank Mebane, while the pro-bridge faction laid the blame on A.D. Ivie and J.M. Sharp, another lawyer active in the anti-bridge movement. The county's newspapers also delved into the fray and fueled the divisive debate. The *Tri-Daily Gazette*, which was called by one of its competing newspapers "the organ that speaks for [Mebane]," was ripe with constant negative references to the lawyers. In a "Tale of a Bridge," a regular column that editorialized the benefits of the bridge and lauded its proponents,²⁶ the newspaper wrote, "[s]ome lawyers can get a man into more trouble in an hour, than he can get out of in ten years" and displayed a front-page political cartoon portraying Ivie as a crony for special interests.²⁷ In another column, the *Gazette* described Ivie and Sharp's opposition to the bridge as just a small part in a larger campaign to dominate the county:

²⁶ The *Gazette's* editor, M.E. Murray, explained that he was intent on using the column as a method of exposing the facts underlying the bridge controversy, writing:

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

A Tale of a Bridge, Tri-City Daily Gazette, Feb. 8, 1924, at 1.

²⁷ *Political Triumvirate*, Tri-City Daily Gazette, Apr. 5, 1924, at 3.

The Ivie-Sharp faction wants to gain control of the Democrat party in Rockingham County and in this way they think, they will control the county, the Board of Commissioners, the County Board of Education, the County Offices, the Jail and Poor Farm, the Road Force and the Convict Camps, the County Playgrounds, Welfare Officers and all the vast army of men under the High Sheriff, some of whom are hired and paid by private interests, and when they thus gain control of everything, including our schools, the whole thing will become a political machine before whom every citizen must bow in blind subjection or be run out of the county.²⁸

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

An old man going a lone highway,
 Came at evening, cold and gray,
 To a chasm vast, and deep, and wide.
 The Old man crossed in the twilight dim—
 The sullen stream had no fear for him—
 But he turned, when safe on the other side,
 And built a bridge to span the tide.
 "Old man," said a fellow pilgrim near,
 "You are wasting your time with building here.
 Your journey must end with the ending day;
 You never again will pass this way.
 You have crossed the chasm deep and wide,
 Why build this bridge at eventide?"
 The builder lifted his old gray head:
 "Good friend, in the path I have com," he said
 "There follows after me a throng
 Whose feet must pass this way.
 This stream, which has been but naught to me,
 To that hurrying throng may a pitfall be,
 They, too, the flowing stream should stem.
 Good Friend, I am building this bridge for them."²⁹

The *Reidsville Review* was also an active participant in the debate, strongly opposing Mebane's bridge and encouraging readers to attend the various mass meetings in the context of news stories covering past

²⁸ *A Tale of a Bridge*, Tri-City Daily Gazette, Mar. 4, 1924, at 1.

²⁹ *Bridge to Span the Tide*, Tri-City Daily Gazette, Mar. 6, 1924, at 1.

meetings. The *Review* was so active in opposing the bridge project and denouncing its proponents that in February 1924, the *Review*, along with the Citizens' Committee, was sued for libel by Pratt, Pruitt, and McCollum. The lawsuit claimed that the Citizens Committee was "wantonly, maliciously, and recklessly" attacking the pro-bridge commissioners and that the *Review* was their soapbox.³⁰

The anti-bridge faction stepped up its campaign and planned another mass meeting in April 1924, where rhetoric became particularly intense. At this mass meeting, which again coincided with a meeting of the Board and at which a Luten Bridge Company representative was in attendance, Citizen's Committee Chairman Montgomery vigorously attacked the proposal, promised that the Citizens Committee would not back down, and then invoked the image of the Ku Klux Klan,³¹ which reputedly counted among its ranks members of the Citizen's Committee leadership. He declared, "I don't know much about this organization. But when we have to go after anything we are not going to mask but we will go if it is necessary."³² The *Gazette* also noted an association between the Klan and the anti-bridge movement, referring to their mass meetings as "mask-meetings."

The battle over the bridge became even more contentious in late 1924 when the county commissioners were up for reelection. When Pratt, Pruitt, and McCollum all declined to seek reelection, Mebane (who, after all, was a Republican himself) pledged his support behind the 1924 Republican campaign and the Republican challengers for County Commission. As the November election approached, it clearly became a referendum on the bridge project and also on B. Frank Mebane himself. The lead editorial in the *Leaksville News* on October 31, 1924, entitled "Do Not Be Deceived," stated that B. Frank Mebane was "pulling the wires" on behalf of the Republican candidates for the Board of County Commissioners and encouraged readers to be wary of

³⁰ Summons for Relief, Brooke, Parker & Smith, Graves, Brock & Graves, J.C. Brown, attorneys for plaintiff, *reprinted in* The Reidsville Rev., Feb. 4, 1924, at 4.

³¹ The KKK often participated in local politics in the south during the 1920s, making their presence known when they felt that the government was not representing what they perceived as the public interest. Klansmen often asserted their will, and often justified their violence, when there was a perceived need to demand more responsiveness from a municipality or county government. See Arnold S. Rice, *THE KU KLUX KLAN IN AMERICAN POLITICS* (1972).

³² *Mass Meeting Now in Session at Wentworth*, Reidsville Rev., Apr. 7, 1924, at 1.

these candidates.³³ The *Reidsville Review*, which generally referred to Mebane as a “special interest” rather than referring to him by name, published a number of direct political advertisements in the lead-up to the election denouncing Mebane specifically, including one that read: “Don’t scratch the Democratic county ticket. It might act as a soothing balm toward healing the twisted political spine of B. Frank Mebane.”³⁴ Commissioners Barber, Martin, and Hampton – understanding that the election would quell any dispute about the Board’s membership – went to great pain to point out that they were pursuing a traditional Democratic agenda, curtailing spending in every way possible, including (but not limited to) their opposition to the bridge. And the Republican candidates desperately tried to avoid being labeled as Mebane’s cronies. Some responded directly with advertisements of their own that warned “Voters Do Not Be Deceived,” or that readers should “Watch B. Frank Mebane.”

The election clearly reflected the county’s anger. With a record voter turnout and in a categorical rebuke of Mebane’s plan, the previous anti-bridge commissioners—Barber, Martin, and Hampton—were all reelected, J. H. Benton and C. H. Dalton, two Democrats firmly opposed the construction of the Fishing Creek bridge, won election, and the Republican candidates were handily beaten. The morning after Election Day, Rockingham citizens were greeted with the headline “In Rockingham County Republicans and Mebane are ‘Snowed Under’” splashed across the cover of the *Reidsville Review*. The newly elected Board promptly put into action their anti-bridge campaign promises and even resolved to prohibit either the Luten Bridge Company or J.S. Trogdon from leaving a bill at the office of the county auditor.

Mebane’s Rockingham County

In addition to igniting a political firestorm, Mebane’s bridge plan also exposed some underlying structural fissures that divided Rockingham County. The Dan River, as it flows eastward from the Appalachian foothills towards Albemarle Sound and the Atlantic Ocean, cuts through Rockingham County to separate two distinct communities. To the south lay an agrarian economy. Reidsville, the epicenter of southern Rockingham County, was largely populated largely by tobacco farmers and became a bustling agricultural center that contributed to North Carolina’s production of more than 90 percent of the nation’s

³³ *Do Not Be Deceived*, Leaksville News, Oct. 31, 1924, at 1.

³⁴ Advertisement, *Watch B. Frank Mebane*, Reidsville Rev., Oct. 31, 1924, at 2.

tobacco supply. To the north of the Dan lay Leaksville, Draper, and Spray, which were emblematic of Rockingham County's burgeoning textile industry prominence. The emergence of North Carolina as a textile leader occurred largely between the 1880s and 1920s, and by a conservative estimate, more than six new mills were built each year in North Carolina between 1880 and 1900, enabling the state to quickly supplant New England as the leading region for textile production. Rockingham County contributed its share to the industry's growth. In Leaksville, Draper, and Spray—which in 1967 were consolidated into a single municipality, Eden—the textile mills employed almost half of the county's residents, and the number of looms in the county nearly doubled between 1900 and 1920.

Reidsville and Eden—separated by a mere 12 miles—represented Rockingham County's dominance in two former staples of the Southern economy, tobacco production and textile milling. In 1920, as Mebane began devising his plan, the balance of economic power began to shift across the Dan, towards industrialization, and precipitated changes in the county's social fabric. Industrialization led to greater creation of wealth for the industrialists, including substantial trickling down to mill and factory workers, and by 1920, the state's small manufacturing work force was creating goods valued at twice the combined production of the state's agricultural sectors. Industrialization also meant a growing discrepancy in wealth that was enjoyed by a relatively small minority. Yet even as industrial employment grew, still only a small percentage of North Carolinians worked at mills, and agriculture remained the dominant political force in North Carolina. This created a landscape ripe for societal and political conflict, pitting enshrined and traditional majoritarian forces against increasingly wealthy individual entrepreneurs.

These tensions were not new, and North Carolina's political parties were forced to navigate between the conflicting interests of agriculture and industry from the post Civil War era. Generally, the Democratic Party stood for traditional agrarian interests, and because of the large percentage of agricultural workers in the state, the Democratic Party maintained a stronghold over state government. But opposition to the Democratic leadership was steady and constant. One of the early political leaders who battled successfully against Democrats was John Motley Morehead, the Whig Governor of North Carolina from 1841 to 1845. With Morehead as governor, North Carolina made significant investments in its schools, railroads, and waterways, generally against intractable Democratic opposition.

The Republican Party inherited the Whig policy priorities, emphasizing the creation of civic improvements to pursue economic growth and stimulate industrialization, and one of the party's leaders in the

early twentieth century was John Motley Morehead, II, the Whig governor's grandson. Morehead II defeated a Democratic incumbent for Congress in 1908 and assumed the chairmanship of North Carolina's Republican Party in 1910. Because of Morehead II's appeal to the state's emerging business leaders, his ascendancy to the party chairmanship "was hailed as the inauguration of a new era in the political affairs."³⁵

One of Morehead II's strongest supporters was a bright young attorney named John J. Parker. At age 23, having just graduated from the University of North Carolina with an A.B. (graduating with a G.P.A. higher than any previous UNC undergraduate³⁶) and an L.L.B., Parker managed Morehead II's successful congressional campaign. Drawn at an early age to the party's progressive vision and its belief in constructively harnessing the power of government, Parker remained actively involved in the state Republican politics. He ran, unsuccessfully, for Congress in 1910, state attorney general in 1916, and governor in 1920.³⁷ But Parker's loyalty to, and connections with, the Republican Party finally reaped returns in October 1925, when President Calvin Coolidge granted the forty-one year old Parker a recess appointment to Fourth Circuit of the U.S. Court of Appeals. The position was made permanent two months later, and he remained on the court until his death in 1958, serving as Chief Judge for the final 27 years of his tenure.³⁸

³⁵ Joseph F. Steelman, *The Trials of a Republican State Chairman: John Motley Morehead and North Carolina Politics, 1910 – 1912*, 43 N.C. HIST. REV. 31, 31 (1966).

³⁶ He received only one 'C', in a logic course taught by his eccentric mentor Horace Williams, who later was forced to explain, "my A's are saved for that person who is interested in philosophy as a professional matter." Judge Harold R. Medina, *John Johnston Parker 1885–1958*, 38 N.C. L. Rev. 299, 300 (1960). Williams would say about Parker, "We fought like tigers from the first day of the course as John would accept no thought unless it was made a part of his own thinking." *Id.*

³⁷ One of Parker's colleagues said many years later, "He must have known that he was renouncing the hope of speedy advancement as a member of the opposite party in a town and country where the majority of people vote the straight Democratic ticket almost as a religious duty." *Id.* at 302.

³⁸ For a time, it looked as though Parker's tenure on the court was going to be significantly shorter, as he was nominated by Herbert Hoover to the United States Supreme Court in 1930. Parker's confirmation hearings were highly contentious and—in what political scientist Peter Fish called "a Senate confirmation process run amuck," *The Hushed Case Against a Supreme Court Appointment: Judge Parker's "New South" Constitutional Jurisprudence, 1925–*

When *Rockingham County v. Luten Bridge Co.* finally reached Parker's desk in 1929, Parker had been fully immersed in the multidimensional political battles between Republican industrialists and Democratic agrarians for nearly two decades. Aside from being politically aligned with (and indebted to) the Morehead family and maintaining friendships with both Lily Morehead Mebane and her husband, B. Frank Mebane, Parker firmly believed in a progressive vision of good

1933, 9 DUKE L. MAG. 12, 12 (1990)—ultimately led to his nomination's rejection by a two-vote majority.

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

The more damaging accusation came from civil rights leaders, who mobilized against Parker's nomination because of comments Parker made during his 1920 gubernatorial campaign. Parker, in response to a Democratic race-baiting campaign that painted Republicans as champions for Black Americans, was reported to have said while accepting the Republican nomination:

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

Id. at 124. NAACP leaders seized upon the first part of this statement and led the campaign against his confirmation. Recent scholarship has suggested that civil rights leaders might have mischaracterized the judge's beliefs. The judge left behind a long judicial record that expressed contempt for regional chauvinism and white supremacy, and he also became a member of North Carolina's branch of the Commission on Interracial Cooperation. Regardless of his true position on race relations, Parker would never escape the lasting effects of his comments from his time in partisan politics.

governance and investments in public works that would facilitate North Carolina's industrialization. As a judge, he became a leader of the "judicial administration movement" that promoted legal reforms to enhance judicial autonomy, administrative expertise, and judicial pragmatism. He also was known to subscribe to a "Madisonian-Marshallian model of American government" that argued that democratic institutions should be designed to resist "the tyranny of temporary majorities."³⁹ And he developed a pragmatic jurisprudence that sought to empower public institutions to tackle modern economic and social challenges, including the daunting task to realize economic development in the South. Thus, by the time Rockingham's political crisis spilled into the Fourth Circuit, Parker had a thoroughly developed view of the role local government should play when corrupt interests, majoritarian passions, and legal uncertainty combine to create political confusion and hamper proper government.

The Suit

On November 24, 1924, only a few weeks after Election Day delivered a resounding defeat to Mebane and his political allies, the Luten Bridge Company sued Rockingham County and its commissioners in the Western District of North Carolina for breach of contract and demanding payment for work on the bridge. The bridge had not been completed when the lawsuit was filed, but substantial work had been done, and the company sued for \$18,301.07, which was the sum of the county engineer's estimated monthly payments minus 10 percent.⁴⁰

The named defendants were Rockingham County and the individual commissioners who were on the board at the time the original contract had been signed: Pratt, Pruitt, McCollum, Barber, and Martin. The complaint portrayed the dispute as a simple breach of contract: it set forth that the Luten Bridge Company and Rockingham County, acting through its Board of County Commissioners, entered into a contract to build a bridge; the latter party hired an engineer to oversee the work and present it with a monthly bill; the county refused to pay the bill;

³⁹ Peter G. Fish, *Guarding the Judicial Ramparts: John J. Parker and the Administration of Federal Justice*, 3 *Just. Sys. J.* 105, 107 (1977). Parker later served as an alternate member of the military tribunal in Nuremberg, Germany from 1945–46, and in many respects, the lessons from Nazi Germany confirmed important tenets of Parker's judicial and political philosophies: his fears of democratic excesses, and his estimation of the courts as essential arbiters in negotiating the balance of powers.

⁴⁰ Under the original contract, the county was allowed to withhold 10 percent of the purchase price until the completion of the contract.

and the action at hand was intended to recover these debts. There was no mention of the turmoil that preceded the suit, and the complaint stated that Pratt, Pruitt, and McCollum, along with Martin and Barber, “are the duly elected, qualified and acting members of the Board of Commissioners” of Rockingham County.⁴¹

On November 27, the three pro-bridge commissioners—Pratt, Pruitt, and McCollum—met in Wentworth with a lawyer and filed an answer.⁴² Claiming to act in their official capacity as duly elected County Commissioners, the three commissioners conceded to all the charges made in the Luten Bridge Company’s complaint, admitting that the county had entered into a contract with the company and that the company had performed its obligations. Without consulting the other commissioners named in the suit, Pratt, Pruitt, and McCollum “asked that the action be dismissed as to them as individuals, and that the defendant Rockingham County be required to pay such sum as was justly due and owing the plaintiff.”⁴³

Before a court could address the pro-bridge commissioners’ answer, the newly elected Board, also claiming to speak for Rockingham County, issued its own response to the suit. The Board moved to dismiss the suit and quash the service of process, arguing that since the summons was addressed to Chairman Pratt and Commissioner Pruitt at the time when Martin was serving as the Board’s Chair and Hampton had replaced Pruitt, the summons was improperly presented. Similarly, the county argued that Hampton should have been presented with a summons instead of Pruitt due to Pruitt’s resignation earlier in the year. Lastly, the county argued that the contract was made by undue influence and therefore was not binding. It further stated that “there was a preponderate opinion . . . that it was not in the public interest to build said bridge, but on the contrary that its construction would be making use of public funds for the private gain and good of one or a few citizens of the county.”⁴⁴

⁴¹ Transcript of Record at 3, *Luten Bridge*, 35 F.2d 301 (4th Cir. 1929) (No. 2873).

⁴² The immediacy between the filing of the Luten Bridge Company’s complaint and the filing of the Pratt, Pruitt, and McCollum answer suggests that there was a coordinated effort behind the two legal actions, though this is not confirmed by the court record or other primary sources.

⁴³ Brief of Appellee at 2, *Luten Bridge*, 35 F.2d 301 (4th Cir. 1929) (No. 2873).

⁴⁴ Transcript of the Record, at 19 (Answer of Rockingham County).

The matters went before district court Judge E.Y. Webb. On June 2, 1927, Judge Webb, without addressing the county's argument that Pruitt's resignation should be enforced, issued a terse two-page ruling that accepted that Pruitt had remained a member of the Board of County Commissioners through 1924. Accordingly, Judge Webb ruled that the November 1924 meeting of Pratt, Pruitt, and McCollum constituted a quorum of the Board of County Commissioners, and he refused to admit into evidence testimony contending that the anti-bridge Commissioners' were, in fact, the county's official body. He then concluded:

The Court is of the opinion that the defendants, T.R. Pratt, Chairman, W.F. Pruitt and J.F. McCollum, were the duly elected and regularly constituted Commissioners for the County of Rockingham, and possessed the necessary power and authority to speak and act for the County in this litigation, and that their answer herein filed is a valid and lawful act for and on behalf of said County, and constitutes the regular and legal answer to the complaint herein filed.⁴⁵

The ruling undermined the core of County's case, severely handcuffing any chance of challenging the validity of either the contract or the authority of the anti-bridge Board's repudiations. And it proved to be determinative. A brief one-day jury trial, held on January 11, 1929, resulted in a verdict that the County was liable to the Luten Bridge Company for breach of contract in the amount of \$18,301.07.⁴⁶

Rockingham County appealed to the Fourth Circuit on April 17, 1929. The county's primary objection aimed at Judge Webb's decision to treat Pratt, Pruitt, and McCollum's answer as one that spoke for the county. The county's appeal rested on sixteen separate grounds, but the arguments fell into three categories. First, it argued that Pruitt had lawfully resigned and ceased being a member of the Board of County Commissioners at the moment he submitted his resignation. As such, the answer he filed with Pratt and McCollum did not reflect a majority of Commissioners and thus could not be the answer for the county. Second, the county argued that the lawfully constituted Board of County Commissioners included Hampton *de jure*, and thus could

⁴⁵ *Id.* at 16 (Findings of Fact, Conclusions of Law and Judgment Upon the Foregoing Motion).

⁴⁶ Judge Parker later expressed disappointment over Judge Webb's handling of the case, remarking to his colleagues hearing the *Luten Bridge* case that Webb "virtually directed a verdict for the plaintiff." See No. 2873 – Memorandum, John J. Parker Papers, *supra* note 3, at Folder 1234.

not include Pruitt. Alternatively, if Hampton was not a member *de jure*, then he acted as a *de facto* member of the Board of County Commissioners and thus acquired official status. Finally, the county argued that even assuming *arguendo* that Pruitt was still a member of the Board when the answer was filed, the three commissioners meeting outside of a formal Board meeting could not act in their official capacity, and thus the answer the three filed was not the county's answer. The county requested that the appeals court reverse the lower court's judgment and remand for a new trial, in which it could admit into evidence its version of events and discredit the answer offered by Pratt, Pruitt, and McCollum.

In response, the Luten Bridge Company, the appellee, countered that Pruitt's resignation had not been properly accepted and that the three pro-bridge commissioners were entitled to act on behalf of the county at the meeting in November 1924. But the crux of the bridge company's argument remained simple: the duly elected Board of County Commissioners of Rockingham County entered into a contract with the company, and since the latter performed their end of the contract, the former must perform as set forth in the contract. The appellees' brief stated succinctly, "the bridge has been built and completed in accordance with the contract, and now spans the stream in Rockingham County, and for which not one cent has been paid by the County."⁴⁷

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

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

⁴⁷ Brief of Appellee, at 6.

Rockingham County v. The Luten Bridge Co., Revisited

With the details of the underlying dispute as background, Parker's complete opinion, including the bulk that is neglected by the case-books, comes into focus, and its intended meaning and historical significance become evident.

Judge Parker began the opinion stating that there were three issues before the Fourth Circuit on appeal. The first was whether the answer filed by Pratt, Pruitt and McCollum was the answer for the county. Thus, the court would have to decide whether Pruitt was still a member of the Board of County Commissioners when he signed the answer, and even if Pruitt were a member of the Board, whether the three men could act as the county's governing body in an informal meeting. The second issue was whether the county's resolutions and notices to repudiate the contract were official actions on the part of the county. The question for the court was whether a Board of Commissioners that included Hampton had the authority to conduct the county's business after Pruitt delivered his resignation. And the final issue was, if the repudiations constituted official county actions, whether the Luten Bridge Company could recover damages for work done after the repudiations were received.

In an opinion that received virtually no negative comments from the other members of the Fourth Circuit panel, Judge Parker concluded that Rockingham County had indeed terminated the bridge contract. He first ruled that the lower court had erred in treating the answer by Pratt, Pruitt, and McCollum as the answer of the county. Even if all three (including Pruitt) were still members of the Board of County Commissioners, they could not act on the county's behalf unless their November 1924 meeting was properly held in "legal session." In noting that "[t]he rule is well settled that the governing board of a county can act only as a body and when in legal session as such," Parker ruled that "Commissioners casually meeting have no power to act for the county" and thus "[i]t is unthinkable that the county should be held bound by such action."⁴⁸

Next, Parker ruled that Hampton had the authority to act officially as a Rockingham County Commissioner. This conclusion rested on two independent grounds. First, Pruitt's resignation was properly accepted by the county clerk before it was rescinded, and thereafter the clerk duly sworn in Hampton as the new commissioner. Each step of this resignation and reappointment process was proper, and though "[t]he mere filing of the resignation . . . did not itself vacate the office of

⁴⁸ *Luten Bridge*, 35 F.2d 301, 304-05.

Pruitt, . . . after its acceptance, he had no power to withdraw it.”⁴⁹ In the alternative, even if Hampton’s appointment was not valid, Parker ruled that Hampton enjoyed authority as a *de facto* officer. Under either argument, the Board of County Commissioners as constituted by Hampton, Barber, and Martin could, in Parker’s view, speak for the county. As such, their declarations that the county no longer wanted the bridge and their instructions to the Luten Bridge Company to halt construction constituted official county actions.

Then, finally, in the final two pages of the nine-page opinion, Parker famously ruled that the Luten Bridge Company had a duty to mitigate the damages from the county’s breach. Parker chiefly cited Samuel Williston’s treatise, which observed that a number of cases, dating back to the New York 1845 case of *Clark v. Marsiglia*, have held that “after an absolute repudiation or refusal to perform by one party to a contract, the other party cannot continue to perform and recover damages based on full performance.”⁵⁰ The case was then remanded to the lower court with instructions to award the Luten Bridge Company its expenses up through the time of the county’s repudiation, plus its expected profits.

Rereading the entirety of this famous opinion—viewing it through the lens of its contextual history—makes a number of lessons immediately apparent. First, Parker expresses concern for the problem of democratic instability, which had the potential to wreak genuine havoc in Rockingham County. The lack of clear rules governing Pruitt’s resignation and replacement created political uncertainty that hampered county government, and Parker used the opinion to devise legal rules that could decisively denote the boundaries of legitimate authority and thus shore up administrative stability. Specifically, Parker handed down a bright-line rule to govern succession, holding that a commissioner’s resignation becomes official and irrevocable upon its acceptance by the county clerk. Parker additionally vested the power of reappointment in the county clerk, reasoning that if a resignation is inextricably linked to a reappointment, then the lines of authority will not be blurred. The ruling reinforces additional administrative stability by insulating the reappointment process from elected officials and centralizing the temporary power in the hands of a bureaucrat.

⁴⁹ *Id.* at 306.

⁵⁰ *Id.* at 307. The British rule has long been different. Parker declined to follow the 1872 British case of *Frost v. Knight*, in which Lord Cockburn permitted nonbreaching parties to continue performing even after a repudiation. British courts have continued to follow the rule in *Frost*, including the post-*Luten* decision of *White & Carter (Councils) Ltd. v. McGregor* in 1962.

By no means did the relevant case law dictate this conclusion—to the contrary, Parker resorted to some creative reasoning. Relying on a passing reference in an 1883 North Carolina Supreme Court opinion stating that a resignation must be accepted by an authority to become official, Parker extended the logic to vest in the County Clerk the power both to enforce a rescinded resignation and to reappoint a successor. Parker’s reason for overstating the clarity of the law is obvious, for it was the law’s lack of clarity that contributed to the political chaos (even the Luten Bridge Company—resorting in the end to “the only safe thing to do”—was uncertain whom to follow). The reasoning reveals both Parker’s pragmatic jurisprudence and his concern for protecting municipal authority.

Second, the *Luten Bridge* case illustrated the dangers of unrestrained political corruption, not just by showcasing the influence of money in elections but, much more important, by revealing the possibility that informal actions have the potential to improperly replace formal government acts. Indeed, the answer issued by Pratt, Pruitt, and McCollum in a secret backroom setting, organized outside standard procedures and beyond the view or supervision of the county’s electorate, was an exercise in arbitrary rule that correlates with purchased politics. Parker’s ruling admonished the pro-bridge commissioners’ for their meeting in late 1924 and declared that “commissioners casually meeting have no power to act for the county.” Instead, a “single entity, the ‘board,’ alone can by its action bind the county,” and he expressed alarm that Board authority is exercised only when it is convened in “legal session” that is subject to standard procedure and not by the whims of certain individuals.⁵¹

On the other hand, Parker did not want legal formalism to impede important government affairs and embraced a *de facto* rule of governmental authority. Consequently, “discharging the duties of a county commissioner” was enough to confer legitimate authority if the “want of power or irregularity [is] unknown to the public.”⁵² In Parker’s view, Hampton earned this *de facto* authority by dutifully assuming the responsibilities of county commissioner. Parker emphasized that the highest priorities—the efficient operation of government and all its

⁵¹ *Luten Bridge*, 35 F.2d at 304. Note that Parker did not have to reach this ruling. He could have rested his holding on enforcing Pruitt’s resignation and deciding that Pratt, Pruitt, and McCollum therefore did not constitute a majority of the commissioners. Parker’s decision to issue the additional ruling to deny authority to the informal meeting reflects his strong objection to arbitrary governing.

⁵² *Id.* at 307.

indispensable duties—were at stake, for legal formalities cannot be divorced from the essential public functions that legal institutions are charged with fulfilling:

The only government which the county had for a period of nearly 10 months was that which [Hampton] and his associates, Martin and Barber, administered. If their action respecting this contract is to be ignored, then, for the same reason, their tax levy for the year must be treated as void and the many transactions carried through at their twenty-five meetings, which were not attended by Pruitt, Pratt or McCollum, must be set aside. This cannot be the law. It ought not be the law anywhere; it certainly is not the law in North Carolina.⁵³

If a fidelity to formalism could impede county leaders from assuming important governmental functions during a time of legal uncertainty—a time when their leadership and decisiveness are needed most—then legal rules need to both stabilize and endorse the exercise of *de facto* authority.

Lastly, and perhaps most important, Parker's opinion cemented the notion that County Boards must have the full authority to enter into, and credibly commit to, contracts with private parties. This authority extends especially to politically unpopular contracts and contracts for long-term projects that last into the reign of succeeding Boards (who might prefer different policies). Such agreements must be insulated from political upheaval, shifts in power following subsequent elections, and the tyranny of temporary majorities, such as the angry tax revolt engineered by Rockingham County's citizens. Accordingly, Parker concluded that although the county's repudiation of the contract meant the Luten Bridge Company should have stopped construction, and thus the district court miscalculated the damages, "[i]t is true that the county had no right to rescind the contract, and the notice given plaintiff amounted to a breach on its part."⁵⁴

Though this final point is tucked away in Parker's reasoning, its importance should not be understated. Residents understood that this issue was at stake. The *Leaksville News*, for example, identified the central issue in the case to be one of local government contracting: "The case will probably make clear whether one board of county commissioners can arbitrarily repudiate the contract of another and 'get by' to the loss of the outside party," or similarly make disingenuous

⁵³ *Id.* at 306.

⁵⁴ *Id.* at 307.

promises it knows future commissioners will refuse to keep.⁵⁵ Indeed, Rockingham County originally denied that it was obligated to any legally binding contract, arguing that contract was entered into under undue influence and was contrary to public interest. However illegitimate Mebane's usurpation of power might have been, permitting Rockingham County to advance such a defense would damage all counties' credibility when committing to contracts. This would undermine a source of authority that counties need most to meet the demands of industrialization since contracting with private parties—bridge companies, railroads, and educators—is essential to meet demands for public improvements.

Consequently, to Parker, the *Luten Bridge* case did indeed (as he wrote to his mentor Williams) address important issues of county government law and implicated policies that were critical to a changing North Carolina. In this respect, sensible rules that govern North Carolina's counties went hand-in-hand with sensible rules for contract law. But perhaps the most striking lesson is the simplest—that *Rockingham County v. Luten Bridge Co.* was only incidentally about the law of contract damages. To the contrary, the case was not so much about what to do once counties got out of contracts, but rather, about enabling counties to enter into contracts.

Afterword

Even though *Rockingham County v. Luten Bridge Co.* was indeed more about North Carolina county law than contract law, the case's lasting image—the unwanted bridge arching gracefully through the forest—continues to intrigue curious contracts students, and every so often anonymous law students and lawyers make a pilgrimage to Eden, North Carolina in hopes of finding the concrete span.

B. Frank Mebane never saw any of the trials related to his bridge. He died suddenly on June 15, 1926 after three days of illness in New York City, while traveling en route to London to meet his wife. Dying without children, Mebane left her his entire estate, then valued at \$2,000,000. News of his death received national attention and was the major news story of the week in the North Carolina piedmont, with headlines such as “His Name is Written Large in Economic History of Rockingham County.”⁵⁶ And retrospective history has been quite kind

⁵⁵ *Fishing Creek Bridge to Get the Spotlight*, Leaksville News, Jan. 4, 1929, at 1.

⁵⁶ *B. Frank Mebane, of Spray, is Dead After Three Days Sickness*, Greensboro Daily News, June 16, 1926, at 1.

to Mebane. Later writings have called Mebane “as sharp a promoter, an entrepreneur, as the Gilded Age produced,” have concluded that “that no man before or since ever lived in that area to possess such brilliant capacities to do great deeds,” and have described Mebane as “[s]o great and powerful that he could build a bridge to nowhere and from nowhere and leave people wondering whether he paid for it or got the county to pay for it.”⁵⁷ Perhaps most vindicating, some current residents of Rockingham County are thankful that the flamboyant, impatient, and politically manipulative Mebane confronted the county’s traditional agrarian culture and brought technological and economic progress to the county.

Judge Parker lived into his thirty-third year as a circuit judge, dying in 1958 while still on the bench and leaving behind an accomplished career that few judges have rivaled. But Parker was unlikely to know of the fame and legacy he would enjoy from his most famous opinion. Though the case appeared in Williston’s casebook two years before Parker’s death, it was not until the early 1960s that it became a staple in first-year contracts texts. And the penultimate testament to the case’s lasting significance did not arrive until 1979, fifty years after Judge Parker wrote the famous opinion, when *Luten Bridge* was included in the *Restatement (Second) of the Law of Contracts* to demonstrate the duty to mitigate.

The Fishing Creek Bridge’s colorful history continued long past Parker’s 1929 decision. The bridge sat quietly over the Dan River for about a decade, unencumbered by traffic and alone in the woods. Occasionally the remote bridge played host to picnics and parties attended by young people from the area, including some elegant dinners and dances. Still, the legal wrangling continued. The Luten Bridge Company evidently continued construction on the bridge long past its November 1924 lawsuit and eventually completed the bridge. In a last gasp effort to reclaim their losses, the company instituted another lawsuit in 1936, this time against the state Highway Commission for \$9800. The company stated that “the bridge cost \$44,000.00 and that only \$34,200.00 had been paid, with \$9,200.00 of it coming from the county and \$25,000.00 from the Spray Water Power and Land Company.”⁵⁸ But the Luten Bridge Company failed to appear at an assigned court date, the suit was dismissed, and the company does not appear in any further public records in Rockingham County.

⁵⁷ Russ Edmonston, *Bridge is Tribute to Entrepreneur*, Greensboro Daily News, Dec. 26, 1976, at G-1.

⁵⁸ *Bridge Concern Again Lost its Fight Last Fri.*, Leaksville News, Aug. 6, 1936, at 1.

In 1935, the North Carolina State Department of Transportation finally connected the bridge to dirt roads leading to Spray and Leaksville, and in 1968, when the Department connected both sides of the bridge to paved roads, the Fishing Creek Bridge was renamed Mebane's Bridge (many also call it "Mebane's Folly"). What might be the bridge's final chapter arrived in the fall of 2003, when the famous bridge was permanently closed to traffic. The single lane bridge still crosses high above the Dan River and remains available for pedestrians, and it now ingloriously supports a sewage pipe leading to Eden's water treatment facility. There had been threats that North Carolina's Department of Transportation might decide to demolish the bridge, but that sewage pipe might just save the bridge from destruction. However long it remains above the Dan River, Mebane's Bridge will serve as a monument to industrial ambition, cronyism, a countryside in transition, Judge Parker's most famous opinion, and one of the most bizarre and heated moments in Rockingham County's history.