

Bucklesberry, Back in the Day

Alexander Richard Sutton (Part 12)

After purchasing the Joyner Mill property in 1903, Alexander Richard Sutton (1860-1928) made headline news in 1904 when he rebuilt the grist mill that had previously collapsed. He found himself in the public eye again one year later, entrenched in a legal quagmire.

Indicted in 1905 for fishing in Bear Creek waters that powered his mill, Alex's case was eventually heard before the North Carolina Supreme Court. Key excerpts from the court record, published in *The North Carolina Reports* (Vol. 139, Fall Term, 1905), follow:

"This action was begun before a justice of the peace, and on appeal the defendant was again convicted in the [Lenoir County] Superior Court for a violation of Chapter 824, Laws 1905, which provides: 'It shall be unlawful for any person to hedge, or fish with traps in the waters of Bear Creek between the mouth of said creek where it empties into Neuse River and the Joyner mill seat in Lenoir County.'" (*State v. Sutton*, p. 448)

"The defendant is prohibited from setting hedges in ditches 15 or 20 yards below the mill house, though he owns the mill house and the land for 75 yards below the mill, as 'mill-seat' designates a well defined landmark—the dam and mill—and not the extent of the mill owner's territorial possession in the vicinity." (*State v. Sutton*, p. 448)

"The setting the wire fences or traps, and taking fish therefrom...the court properly adjudged the defendant guilty upon the special verdict. Though these ditches are filled with water and hence have fish only in overflows from the pond, the waters are part of 'the waters of Bear Creek'....The owner of the mill has no rights over either the water, or the fish therein, after they have gone by the wheel or dam." (*State v. Sutton*, p. 450)

"From the amount of the fine imposed—\$5—we presume that this was merely a test case, to decide upon the defendant's right of catching fish by hedges or traps, which right under the statute does not extend lower down than catching them in that mode, on the sheeting, or at any other spot on the mill site, as they come down out of the pond, through the forebay or over the dam. Below that, the waters of Bear Creek are free from such inventions, and 'May roll unvexed to the sea.' Affirmed." (*State v. Sutton*, p. 450)

Although upheld, two of the seven Justices were of the opinion that the lower court decision should have been reversed. Justice Henry G. Connor's lengthy dissent was logical, justifiable, and eerily foreshadowed the concern that many lovers of liberty have today. He wrote in part:

"The ditches are in no sense a part of Bear Creek. It does not appear how far they run up into the defendant's land. I do not think they are in the words of the Statute, nor do I think it competent for the Legislature to prohibit the owner from placing nets or hedges across his own ditch unless doing so constitutes a public nuisance.... We may soon find upon the adjournment of some session of the Legislature that a man may not, with safety, walk over his own land or gather flowers which grow upon the side of his path or the banks of his ditches, without liability.... While the policy of the State in protecting the propagation of fish should be sustained, the right to the use of private property should not be sacrificed. We are in danger of surrounding our people with a multitude of criminal statutes, many of which are invasions of personal liberty and the use of property..." (*State v. Sutton*, pp. 453-454)