

and it asked what gentlemen the Senators had in contemplation as proper judges, because none had occurred to the Delegates that they thought would accept the trust. The Senate responded at once with a list of those proposed to be balloted for in that house, but the names are not preserved in the records. Three days later, on December 12, 1778, the House balloted on the question, and selected the names of Benjamin Rumsey, Benjamin Mackall, 4th, Thomas Jones, Solomon Wright, and James Murray; and on the same day the Senate concurred in the appointments of these men. No basis of selection was announced; it was not stated that judges of the court were, or should be, selected from different parts of the state. A joint commission to the five judges was issued by the Governor and Council under date of December 22, 1778, and on January 11, 1779, the judges were notified of its issuance by a letter from the Council.<sup>2</sup>

The order of precedence of the judges was, according to the custom long followed in the appointment of councillors and other officers, left to implication from the order in which they were named in the joint commission; and thus it was that Benjamin Rumsey became Chief Judge. He was not explicitly so designated in the commission or in the certificate of his oath of office, and he is not so described in the contemporary minutes until 1799. Chief Judge was, perhaps, his unofficial title or description, just as it had been that given to the Governor before 1776, when sitting on the Court of Appeals; and the retention of the title

2. Archives, Journal and Corresp. Council, 1778 to 1779, 277.