Charleston's Court of Wardens 1783-1800: A Post-Revolutionary Experiment in Municipal Justice

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In focusing most of their attention upon appellate courts, legal historians have generally neglected the work of lower tribunals,¹ an omission which threatens to distort our understanding of the workings of the American legal system by ignoring those courts that have had the most impact on the daily life of the citizens. Indeed, with recent commentary and judicial opinions questioning the role of lower tribunals in contemporary society,² surely the time has come for scholars to view the court structure from the bottom up. This article is an attempt to correct this deficiency, in part, by examining the operations of the long forgotten Court of Wardens, which functioned in Charleston, South Carolina, between October, 1783 and January 1, 1800.³ The Court

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2. For judicial commentary see Gordan v. Justice Court for the Judicial Dist. of Sutter County, 12 Cal. 3d 323, 525 P.2d 72, 115 Cal. Rptr. 632 (1974), cert. denied, 420 U.S. 938 (1975); North v. Russell, 516 S.W.2d 103 (Ky. Ct. App.), vacated and remanded mem., 419 U.S. 1085 (1974), which the Kentucky Court of Appeals has heard again, S.W.2d (Ky. Ct. App. 1975), and in which the United States Supreme Court has recently noted probable jurisdiction. 422 U.S. 1040 (1975); Waggoner v. Castleman, 492 S.W.2d 929 (Ky. Ct. App. 1973); Ditty v. Hampton, 430 S.W.2d 772 (Ky. Ct. App.), appeal dismissed, 414 U.S. 885 (1972). See also the dissenting opinions in Perry v. Banks, 521 S.W.2d 549 (Sup. Ct. Tenn. 1975), arguing that a nonattorney judge cannot sit as a juvenile judge.

For academic and editorial comment see J. ROBERTSON, ROUGH JUSTICE: PERSPECTIVES ON LOWER CRIMINAL COURTS (1974), and newspaper articles appearing in the N.Y. Times, June 2, 1975, at 3, col. 1 and the Nashville Banner, June 28, 1975, at 5, col. 2.

3. Recently published historical accounts of Charleston and the court structure of
of Wardens was an experiment in swift and efficient administration of justice at the municipal level, and its history reveals much about the legal concerns of post-Revolutionary America.

In reality, Charleston was a late comer in the initiation of city courts. Many English cities, including London, and American cities such as New York and Philadelphia had long conducted mayor's courts. Unlike the situation in Great Britain, however, the mayor and council played an important role in the American tribunals. For example, the Mayor's Court of Philadelphia, established in 1701, consisted of the mayor, a recorder, and aldermen, and had jurisdiction of criminal cases arising in the city. In 1789, following the Revolution, the mayor's court was revived and a companion alderman's court was created which exercised civil jurisdiction over matters exceeding 40 shillings. Similarly, when Richmond was chartered in 1782 the mayor and aldermen were authorized to conduct a court of hustings with both civil and criminal functions. Charleston was, therefore, in a position to draw upon considerable experience elsewhere in the local administration of justice.

Beginning in the 1760's there was a persistent demand that Charleston be incorporated as a city, and, in 1771, a grand jury called for "a number of sitting justices" to meet weekly in Charleston. The need for a local tribunal grew more acute after passage of the Circuit Court Act in 1769 which assigned circuit duties to the principal courts in the state. Pursuant to this measure the Courts of Common Pleas and General Sessions of the Peace sat but twice a year in Charleston. The incorporation movement gained added momentum from popular disorders following the Revolution, and in August of 1783, the South Carolina
legislature responded to the pressure and granted Charleston a charter.

The charter for the city of Charleston divided the municipality into thirteen wards. The free white persons who resided in each ward and paid taxes selected annually a warden, and the thirteen wardens composed the city council. Following ward elections, the entire electoriate of the city selected from among the wardens a city executive, the intendant, to serve for one year. The intendant’s place among the wardens was then filled by special election. While the city council was vested with extensive legislative power, its members were also given a significant judicial function. Each warden was required “to keep peace and good order” in his ward, and was given “all the powers and authorities that Justices of the Peace . . . [possessed].” The legislature also created a Court of Wardens, composed of not less than three wardens, “to hear and determine all small and mean causes” and “all other matters of complaint arising within the said city.” Under South Carolina law such jurisdiction was confined to suits not exceeding three pounds.

The Court of Wardens opened for business in October of 1783, but there appeared to be some confusion concerning the power of the court. In 1784 a House committee recommended that the wardens be granted express power “to Imprison any person who shall refuse or neglect to pay the Fines which are or may be imposed on them for the violation of the police established by their Ordinances.” A subsequent measure detailed the two principal areas in which the tribunal could act. First, the Court of Wardens was authorized to enforce the fines and penalties incurred by reason of violations of the city ordinances. Persons who failed to pay such fines could be committed to prison. Second, the civil jurisdiction of the court was enlarged to include complaints

10. In 1797 the city council noted that “all the wardens, whether sitting in the City Hall or elsewhere, are liable to be called upon, in a magisterial capacity.” Charleston City Gazette and Daily Advertiser, October 11, 1797.
12. The South Carolina Weekly Gazette, October 24, 1783 announced:
We have the pleasure to inform the public that the first Wardens Court was opened last Tuesday and will continue to sit every Tuesday and Friday throughout the year, at the Exchange in Charleston.
13. Journals of the House of Representatives, February 9, 1784 (South Carolina Department of Archives and History).
14. 7 Cooper, Statutes at 101-02.
for nonpayment of wages or debts "or of any damage," not exceeding 20 pounds (approximately $88.) The tribunal was designated a court of record and individuals attending thereon were free from arrest in any civil action. The Court of Wardens possessed no equity jurisdiction and questions concerning "the titles of lands" were expressly exempted from the court's authority. It did not hear criminal cases, other than the penal sanctions of ordinances (although as justices of the peace individual wardens could issue warrants to apprehend offenders, admit to bail, or commit pending trial."

The Court of Wardens enjoyed a streamlined procedure and provided a readily available forum. Sitting on the first Tuesday of every month, the tribunal adjourned "from day to day until the docket be cleared, and all other business before them be disposed of." In addition to this monthly meeting, by the 1790's the Court of Wardens convened weekly to consider "small and mean causes" and cases in which the city was a party. The Wardens met in rotation to share their judicial duties, but more than the minimum number of wardens would be present for matters of special importance. There may have been some problem with absentee wardens since a 1796 ordinance provided: "That the wardens shall hold the court in their respective turns; and each warden who shall neglect to attend" should be fined.

Civil suits were instituted by a petition to the court. Upon payment of a filing fee and "by order of any one of the wardens," the court clerk issued process and sent the papers to the city sheriff. Such process was served upon the defendant and all witnesses by the sheriff, giving ten days notice to show cause why judgment should not be given for the plaintiff, and the defen-

15. Of course, penal ordinances might deal with conduct that could also give rise to criminal responsibility. In 1794 riotous French sailors caused a disturbance at the theater and were tried by the Court of Wardens. Those found guilty were fined for violation of the ordinance regulating seamen. Charleston City Gazette and Daily Advertiser, March 19, 1794.

16. Charleston, S.C., Ordinance of January 25, 1796 (All Charleston ordinances hereinafter cited only by date). An earlier ordinance required the court to meet monthly, "which said court shall sit from day to day, or adjourn to any other time, as the business brought before them shall or may require." Ordinance of October 15, 1787. The distinction between the weekly and monthly court existed by 1794, and probably originated earlier. The South Carolina and Georgia Almanac for the Year of Our Lord 1794 (microprint).

16.1. Id.

17. For instance, eleven wardens presided at a controversial trial in 1790. Charleston City Gazette, August 11 and 12, 1790. See note 44 infra.


18.1. Ordinances of November 22, 1783 and October 15, 1787.
dant was required to file any discount or objection to the demand at least three days before trial. Upon an affidavit establishing probable cause, a defendant owing more than seven pounds three shillings could be held to bail. If a defendant failed to appear, the Court of Wardens could proceed to a default judgment. It is significant to note that the court resolved its cases in a summary manner without a trial by jury.

Since the membership of the court was composed of at least three wardens, it is enlightening to examine the character of those constituting the bench. As might be expected, annual elections gave rise to a high rate of turnover among the wardens. Rarely did an individual serve more than two consecutive terms, and there were frequent special elections to fill vacancies caused by refusal to serve, death, or resignation. This short tenure on the council permitted a large number of people to serve. Unlike local tribunals in other jurisdictions, the Court of Wardens never became a self-perpetuating clique. There was, of course, no provision that the wardens be lawyers, and while the occupation of all of the wardens cannot be established with certainty, it appears that the overwhelming majority of those elected were not attorneys. Merchants seem to have dominated the council, with usually one or two lawyers named annually as wardens, but there were some years in which the council apparently did not include any members of the bar. The Court of Wardens was, therefore, a predominantly lay tribunal.

Many of the wardens were, however, active in state politics, frequently serving in the South Carolina Senate or House of Representatives, and on occasion holding legislative and municipal posts concurrently. For example, in 1786, John F. Grimké was...
intendant, judge of the circuit court, and Speaker of the House. Other wardens went on to important political careers including Arnoldus Vanderhorst, warden and intendant, who was later elected to both houses of the legislature and to the governor's chair; William Johnson, Jr., Jefferson's first appointee to the Supreme Court, served two years as a warden in the 1790's;23 Henry W. Desaussure, warden and intendant, subsequently occupied the position of chancellor for 29 years and compiled four volumes of chancery reports; Warden John Mathews became a chancellor; and Dr. David Ramsay, the early historian of South Carolina, served in the House and was President of the Senate while acting as warden. Such credentials are ample evidence that there were wardens who possessed the potential for strong and effective leadership in local affairs.

Several city officers, elected by the council, assisted the operations of the Court of Wardens. The most important was the city recorder, an attorney who performed multiple duties.24 The recorder was required to attend court sittings, and "to give his opinion to them in matters of law." He was charged with bringing suit to recover "all fines, penalties and forfeitures" and sums of money owed the city; he advised the council on points of law, and defended actions brought against the city. In 1790 the recorder advised the city council that a master whose slave had been convicted of an offense was not liable for the expenses of the prosecution,25 and four years later the council directed the recorder to "commence actions against all defaulters for lottery tickets."26 Judging from the four men who served in this capacity during the period under investigation, recorders seem to have been men of legal competence. The first, William Hasell Gibbes, held the post of master-in-equity for many years, while another, William Marshall, was later named chancellor. Recorder John Bee Holmes was

23. Johnson was elected a warden in September of 1795, and was re-elected the following year. He resigned in June of 1797. Charleston City Gazette and Daily Advertiser, June 13, 1797. Johnson's biographer inexplicably neglects this chapter of his subject's law career. See D. MORGAN, JUSTICE WILLIAM JOHNSON: THE FIRST DISSENTER (1954).

24. Initially the recorders were elected annually, but in 1787 city council provided that the recorder "be commissioned by the intendant during good behavior," only to change its mind in 1792 and adopt a two year term for the recorder. The duties of the recorder were most fully spelled out in Ordinance of March 24, 1792, but the Ordinances of October 15, 1787, October 30, 1787 and October 24, 1796 also concerned the office of city recorder.


subsequently elected intendant, served in the State Senate, and was re-elected recorder in 1811.\textsuperscript{27}

Pursuant to a 1787 ordinance, the city council additionally selected a clerk of the Court of Wardens who collected the court fees, issued process and executions, and prepared a docket of pending cases.\textsuperscript{28} During the life of the court the same persons acted as both city clerk and clerk of the Court of Wardens. Also involved in the operations of the court was the city sheriff, who served process and executions, levied on the goods of the defendant, and conducted public execution sales.\textsuperscript{29}

Since the early municipal records of Charleston were destroyed in the Civil War, it is impossible to reconstruct fully the volume and type of litigation which came before the court. Nonetheless, an examination of newspapers and relevant ordinances suggests some tentative conclusions. The collection of routine debts appears to have been the prime business of the wardens, since in 1785 the city council established special court rules to render "their mode of proceeding in the recovery of debts as plain and obvious as possible."\textsuperscript{29.1} The rules permitted the plaintiff to prevail on an account by producing "some proof of the sale or delivery, or some book or memorandum in writing, containing the original entry . . . ."\textsuperscript{29.2} In a suit upon a bond or note the plaintiff had to prove the handwriting of the defendant.\textsuperscript{30} A decade later a correspondent argued against abolition of the court by asking: "How many men are there now, who never think of paying a tradesman or shopkeeper's bill until compelled by an


\textsuperscript{28} Ordinance of October 15, 1787. Noting that "it hath often happened, that poor and moneyless persons (who are equally entitled to justice with the rich) could not obtain process against those who injured them, or if they did it was through the courtesy of the clerk," in 1789, the city council relieved the court clerk of financial responsibility for fees that he could not collect "after using due diligence." Ordinance of August 3, 1789.

\textsuperscript{29} Ordinance of October 15, 1787.

\textsuperscript{29.1} Charleston Evening Gazette, August 25, 1785.

\textsuperscript{29.2} Id.

\textsuperscript{30} Id. Contrary to the common law rules of evidence, the entry of transactions in a merchant's ledger was generally admissible in municipal courts. Morris, Select Cases of the Mayor's Court of New York City, 31 (1935).
appeal to the Court of Wardens!"\textsuperscript{31} He noted "the innumerable small causes of simple debt which occur."\textsuperscript{31,1}

The other major category of cases to come before the Court of Wardens involved infractions of city ordinances, for which a wide variety of fines and penalties were enforced by the municipal tribunal. For instance, ordinances preventing work on Sunday, preserving lamps, requiring muzzles on dogs, regulating funerals, governing the conduct of seamen in the city, preventing fires, and regulating carts and wagons all specified a fine to be recovered in the court.\textsuperscript{32} Since the city relied heavily upon shares in fines to stimulate prosecution, one half of any recovery went to the use of the city according to a 1787 ordinance, "and the other half to the use of such person or persons as shall inform, and prosecute to effect, for the same, before the court of wardens."\textsuperscript{33} A 1783 ordinance against hawking and peddling provided for the condemnation in the Court of Wardens of goods sold in violation of the law.\textsuperscript{34} A series of ordinances sought to maintain the assize of bread by holding bread, deficient in weight or quality, subject to seizure, and the delinquent bakers liable for a fine.\textsuperscript{35} On at least one occasion the Court of Wardens enforced this provision.\textsuperscript{36}

Several miscellaneous matters also occupied the time of the court. It regularly acted upon petitions to claim the benefit of the 1759 statute providing for the relief of insolvent debtors.\textsuperscript{37} If an arrested debtor prepared a schedule of his estate, the clerk of the court gave public notice that the prisoner would be liberated and his property assigned unless the creditors showed cause to the contrary. Additionally, applications for licenses to sell liquor or

\textsuperscript{31} Charleston City Gazette and Daily Advertiser, October 21, 1799.
\textsuperscript{31.1} Id.
\textsuperscript{32} See Ordinances of the City of Charleston, passim.
\textsuperscript{33} Ordinance of November 12, 1787.
\textsuperscript{34} Ordinance of November 6, 1783.
\textsuperscript{35} Pursuant to a 1784 statute, the city council was "vested with full power and authority to regulate, from time to time, the price and assize of bread." 7 Cooper, Statutes, 101. Council enacted several such regulatory measures during the post-Revolutionary period. Ordinances of April 28, 1785; October 11, 1786; December 17, 1787; September 27, 1792; and July 30, 1795.
\textsuperscript{36} In October of 1794 two wardens seized and sent to the poor house a quantity of bread deficient in weight and quality. The defaulting bakers were also fined by the Court of Wardens. Charleston City Gazette and Daily Advertiser, October 11, 1794.
\textsuperscript{37} 4 Cooper, Statutes, 86-94, as amended in 1788 at 5 Cooper, Statutes, 78-80. Public notices of petitions to the Court of Wardens by insolvent debtors regularly appeared in Charleston newspapers. For example, see Charleston City Gazette, May 28, 1788 and February 8, 1790.
keep billiard tables were made to the Court of Wardens, and, at the direction of the court, sections of sundry ordinances were published in the newspaper, presumably to forewarn possible violators.

The Court of Wardens exercised a limited appellate jurisdiction. Commissioners, appointed by council to carry out specific tasks, could levy fines but were required to seek judicial assistance to commit offenders who failed to pay. Pursuant to a 1786 ordinance, any person could appeal from a decision of the commissioners of markets to the Court of Wardens, which was "directed to examine and determine on the case." Unsuccessful appellants were liable to double fines. The court itself was subject to occasional legislative inspection. In 1788 the House directed the court clerk to appear with his books containing the writs and executions issued since the last session of the legislature.

At times there was some uncertainty concerning the extent of the judicial power of the wardens, and city officials often pressed the state legislature for additional authority. In 1787 the intendant and council petitioned the law makers without avail "that the Wardens of the said corporation may be authorized to hold a court of sessions every month, with similar powers to those of the county courts." A 1790 cause célèbre, involving a prosecution under a municipal ordinance to suppress gaming, produced another memorial to the legislature requesting further clarification of the court's power. In 1791 a receptive legislature enlarged the jurisdiction of the Court of Wardens in several respects:

1. The tribunal was permitted to take cognizance of cases

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38. Ordinance of July 30, 1787, as published in Charleston City Gazette, July 3, 1788; Ordinance of August 18, 1788.
40. Ordinance of October 27, 1786.
41. Ordinance of October 11, 1786.
42. Journals of the House of Representatives, October 18, 1788.
43. Petition of Intendant and Wardens, Charleston Morning Post, March 20, 1787.
44. In August of 1790 two defendants were arrested for swindling in violation of a municipal ordinance. After a closely reported trial before the Court of Wardens, one defendant was found guilty and fined. Charleston City Gazette, August 5-11, 1790. The other defendant obtained from the Court of Common Pleas an order to show cause why a writ of prohibition should not be granted to stay further proceedings by the wardens. Thereupon, the Court of Wardens postponed the trial. Charleston City Gazette, August 27, 1790. For the text of the memorial see Charleston City Gazette, January 20, 1791.
45. 7 COOPER, STATUTES, 107-08. The custom of parties to divide the amount of their debts was described in the memorial by the Intendant and wardens to the House of Representatives. Charleston City Gazette, January 20, 1791.
where the debt or damage occurred outside the city but the defendant was found in Charleston.

2. The wardens were empowered to grant a commission to examine witnesses who resided outside the city.

3. The law makers approved the practice whereby the wardens took jurisdiction of cases in which several notes due from one debtor to a single creditor totalled in excess of 20 pounds, although each note separately was smaller than the jurisdictional limit.

4. The court was authorized to try offenders of the state statute prohibiting gambling "upon the principles of law in criminal cases," and provided that a jury be drawn for that purpose.46

It is evident by the growth in the volume of cases that the Court of Wardens was liked by litigants. Observing that "the business of the Court of Wardens has greatly increased, whereby the revenue of the city is much benefited," a 1798 ordinance allowed the court clerk to procure a deputy to assist him.47 The principal reason for this popularity was not difficult to ascertain—suitors could obtain a prompt adjudication of their claim. An appellate decision in 1798 recognized that, since the Court of Wardens sat monthly, "the recovery of small sums, therefore, in it, was much more speedy than in the court of common pleas. . . ."48 Indeed, as we have seen, it became customary for parties entering into contracts to divide large sums and debts into smaller ones under 20 pounds. Such a move permitted the parties, in the words of city council, "to avoid the tedious processes of the superior courts, in cases of non-payment of the debtor, and to have the benefit of the more summary jurisdiction of the court of wardens."49 The level of judicial activity is further illustrated by the court fees and fines, which were reported as annual income to the city. Although the fines and forfeitures were never large, the court fees grew considerably, exceeding $2500 in 1797 and $3400 in 1799, by which time the court was well established.50

46. 5 COOPER, STATUTES, 176-78. City council thereafter provided for drawing juries to try offenders against this act. Ordinance of August 11, 1791. In 1797 the Court of Wardens cited several individuals for nonattendance as grand or trial jurors and gave notice that they would be fined unless they offered a good excuse for such default. Charleston City Gazette and Daily Advertiser, November 7, 1797.

47. Ordinance of March 12, 1798.


49. Charleston City Gazette, January 20, 1791.

50. An abstract of the city's expenses and income appeared each year in the Charleston newspapers during early September. See Charleston City Gazette and Daily Advertiser, September 4, 1797 and September 2, 1799.
Disappointed litigants could petition the Court of Wardens for a new trial, but the governing statutes did not provide for an appeal on the merits to the circuit courts. Nonetheless, on motion for a writ of prohibition or a writ of habeas corpus, the Court of Common Pleas rendered several opinions concerning the jurisdiction of the inferior city tribunal. Perhaps reflecting some judicial hostility to lower courts, in each case the Court of Common Pleas narrowly construed the scope of the Court of Wardens and granted the requested relief. Two of these opinions warrant discussion. In *M’Mullen v. City Council of Charleston*, the defendant was convicted of selling liquor without a license contrary to state law and was fined 50 pounds. Upon non-payment he was committed to jail, but obtained his discharge upon a writ of habeas corpus from the Court of Common Pleas, the majority reasoning that the 1784 act gave the wardens cognizance only of matters under 20 pounds. Judge Grimke dissented, arguing that the limitation to 20 pounds “only applied in cases of civil action between man and man” and hence the wardens could enforce the penalty. *Zylstra v. Corporation of Charleston* posed a similar problem. The circuit court granted a writ of prohibition restraining the levy of a fine of 100 pounds for violation of an ordinance. Again the high tribunal concluded that “In this, and in all cases beyond £20, the court of wardens are completely shut out from intermeddling. . . .” Judge Thomas Waties concurred on the far more sweeping ground that the 1784 act was “a direct violation of the constitution, and [was] therefore void.” He asserted that the summary power of the wardens denied the “fundamental right” of a trial by jury, and that the city charter created “a most unnatural combination of the legislative, the executive and judicial powers.”

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51. Although no rules concerning new trials could be located, it is apparent that such relief was available. A 1793 ordinance required that “on all applications to the court of wardens for new trials” the moving party must pay all fees due on the previous suit. Ordinance of April 19, 1793. In 1796 “motions for new trials” were directed to the weekly sittings of the tribunal. Ordinance of January 25, 1796.

52. 1 Bay 46 (S.C. 1787). The opinions of the judges in the *M’Mullen* case were more fully reported in the Charleston Morning Post, July 14, 1787.

52.1. Charleston Morning Post, July 14, 1787.

53. 1 Bay 382 (S.C. 1794).

53.1. Id. at 388.

54. 1 Bay at 394-95, 396. O’Neall classed the Waties opinion in *Zylstra* among “models of judicial eloquence.” 1 O’NEALL, BIOGRAPHICAL SKETCHES OF THE BENCH AND BAR OF SOUTH CAROLINA at 44 (1859). Article 41 of the South Carolina Constitution of 1778 provided “That no freeman of this State be taken or imprisoned, or disseized of his
As the judicial opinions above indicate, the Court of Wardens was never without its detractors. The first and most consistent complaint was that the Court of Wardens sat without a jury. A House committee report in 1787 declared such practice "contrary" to the South Carolina Constitution, but declined to make any specific remedial recommendation. Expressing dissatisfaction about a penal ordinance, a 1793 correspondent wrote that "the best security of a fair trial one accused of an offense can have is a jury." Secondly, critics argued that the wardens improperly combined executive and judicial power, whereby the same body that enacted ordinances could pass upon violations. To vest such power "in the same Man, or body of Men," the 1787 House committee contended, "is destructive to the liberties of the Citizens and contrary to the Spirit of our Constitution." After the 1791 extension of city jurisdiction, rural grand juries began to complain that suits cognizable in outlying courts were being transferred to Charleston. As a result, witnesses and litigants were required to attend court away from their districts, a politically sensitive problem in post-Revolutionary Carolina. This situation was typically illustrated by the 1792 presentment of the Chesterfield County grand jury which maintained that:

[T]he court of wardens in Charleston are permitted to hold pleas or have jurisdiction over contracts or trespasses made, arising or committed without the limits of the said city, whereby divers good citizens, who reside in places remote from Charleston, are wrongfully drawn into controversy, put to undue vexation, and excluded from trial by jury in that court.

freehold, liberties, or privileges, or outlawed, exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers or by the law of the land." 1 COOPER, STATUTES, at 146. Identical language appeared in Article IX, Section 2 of the Constitution of 1790. For other opinions dealing with the Court of Wardens see Wall v. Court of Wardens, 1 Bay 434 (S.C. 1795) and Ramsay v. Court of Wardens, 2 Bay 180 (S.C. 1798).

55. REPORT ON THE REVISAL OF THE CHARTER OF THE CITY OF CHARLESTON, House of Representatives, March 12, 1787 (South Carolina Department of Archives and History). This House report was mentioned by a correspondent who complained about the lack of trial by jury in the Court of Wardens. Charleston Morning Post, June 18, 1787 and July 4, 1787. Again in 1791 a House committee urged that "the powers heretofore vested in the city council be moderated and restricted, or that a jury be annexed to the court of wardens, in the exercise of their powers." Charleston City Gazette, February 4, 1791.

56. Charleston City Gazette and Daily Advertiser, November 16, 1793.

57. REPORT ON THE REVISAL OF THE CHARTER OF THE CITY OF CHARLESTON, note 55 supra.

58. Charleston City Gazette and Daily Advertiser, November 8, 1792. For a similar presentment by the grand jury for Beaufort District see Charleston City Gazette and Daily Advertiser, November 9, 1793.
Other grievances, as brought out in the decisions of the Court of Common Pleas, concerned the amount of the fines which could be collected by the wardens. Rarely were there complaints about the fairness or outcome of civil cases before the municipal tribunal.\(^59\) Interestingly enough, the fact that the court was composed of laymen was never advanced as an objection. The routine nature of the civil cases and the advice of the recorder doubtless served to minimize complaints on this score.\(^60\)

The beginning of the end for the Court of Wardens came in December of 1798. In the course of debate over a bill to revise the judicial system of the state, the House adopted, by a vote of 54-37, an amendment to repeal two clauses of the 1784 act pertaining to the Court of Wardens.\(^61\) This move, effective January 1, 1800, emasculated the jurisdiction of the court, by confining it to small causes under three pounds, as provided in the 1783 incorporation statute. The amendment apparently caught Charleston by surprise as there was no newspaper discussion of repeal prior to the action of the legislature.

Commencing in mid-1799, Charleston residents opened a counterattack to continue the full authority of the Court of Wardens. The grand jury of the Charleston District commended the tribunal and declared that repeal would “materially injure the interest of mechanics and small traders,” pointing out that “from the best information we have been able to collect, it is the wish of the greater part of the inhabitants of this metropolis, on whom it chiefly operates, to retain the full power of the court of wardens . . . .”\(^62\) A citizen warned that “if all causes of the description now decided in the court of wardens were added to the common pleas docket, this court would not be able to get through docket of a single return day, in less than a year or two.”\(^63\) In October of 1799, a memorial to the legislature, requesting a continuation of

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59. One exception was an advertisement placed by two disappointed litigants in a civil action. Decrying a “most extraordinary decision,” the parties claimed that it was a grievance that “the judgment of three men perhaps totally unacquainted with the laws of the country, should have such power, and from whose decision there is no appeal.” Charleston City Gazette, July 8, 1790.

60. When Camden was incorporated in 1791, however, the legislature gave each warden the powers of a justice of the peace, and only authorized the wardens “to hear and determine all small and mean causes.” 7 COOPER, STATUTES, 165-68.

61. Charleston City Gazette and Daily Advertiser, December 25, 1798. The new judiciary act was designed to establish “a more easy, certain, and uniform system of judicature.” 7 COOPER, STATUTES, 283-89.

62. Charleston City Gazette and Daily Advertiser, June 7, 1799.

63. Id., October 21, 1799.
the court or the substitution of another tribunal with similar jurisdiction, was circulated for signatures.\textsuperscript{64} Although presented to both houses of the legislature, the petition was in vain. Influenced by the Zylstra opinion, and presumably by rural opposition to a city court a large majority of the lawmakers opposed restoring the judicial power of the wardens.\textsuperscript{65}

In recognition of its impending abolition, the Court of Wardens began to wind up its affairs. The city council, in November of 1799, adopted a resolution that all actions in the court should be tried or dismissed in December.\textsuperscript{66} Observing that "the business of the said court is thereby considerably diminished," in March of 1800, the council abolished the posts of clerk and deputy clerk of the Court of Wardens.\textsuperscript{67} And so, the Court of Wardens came to a virtual end in January of 1800, its success as a forum for the resolution of disputes ironically contributing to its demise.

Elimination of the court, however, could not still the demand of Charleston citizens for a municipal tribunal to give a prompt hearing to small law suits. In late 1800 Charleston residents again petitioned for the establishment of a city court.\textsuperscript{68} Over the strong protest of C. C. Pinckney, the Senate in that year refused, 17-15, to send a bill creating an inferior court to the House.\textsuperscript{69} Finally, following another petition, the legislature passed a measure, in December of 1801, creating the Inferior City Court. The lawmakers noted that:

\begin{quote}
Great inconveniencies have arisen from the abolition of the jurisdiction of the court of inferior jurisdiction, in the city of Charleston, as well to the citizens of Charleston, from the peculiar modes of doing business in the city, as to the suitors, and
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\begin{footnotes}
\item 64. For the text of the memorial see Charleston City Gazette and Daily Advertiser, October 25, 1799; Journals of the Senate, November 25, 1799 (South Carolina Department of Archives and History). The petition declared that "in a large and growing commercial city, a great proportion of its inhabitants, whose capitals are circumscribed, must necessarily depend on the speedy and effectual recovery of small debts, for the support of their families and for the means of continuing their business."
\item 65. For the legislative debate see Charleston City Gazette and Daily Advertiser, December 11, 1799. Rural grand juries strongly approved the new judiciary act and, without mentioning the Court of Wardens, opposed attempts to delay its operation. See, e.g., the presentments of the grand jury of Ninety-Six District, Charleston City Gazette and Daily Advertiser, June 4, 1799; and the grand jury of Newberry County, Charleston City Gazette and Daily Advertiser, October 4, 1799.
\item 66. Charleston City Gazette and Daily Advertiser, November 7, 1799.
\item 67. Ordinance of March 21, 1800.
\item 68. Charleston City Gazette and Daily Advertiser, November 13, 1800.
\item 69. Journals of the Senate, December 13, 1800.
\end{footnotes}
persons having business in the district court, by reason of the
great accumulation of causes therein.70

The 1801 act tailored the new tribunal to meet the previous objections to the Court of Wardens. The status of the recorder was altered from a legal advisor to the presiding judge, commissioned "during good behavior."70.1 All issues exceeding in value the summary jurisdiction of a justice of the peace were to be tried by jury. No suit could be maintained in the Inferior Court "unless the contract or cause of action hath been made, or arose within the limits of the said city of Charleston."70.2 Although the court still could not hear controversies over land titles, its authority did extend to the recovery of debts, contract actions, and offenses against city ordinances, to the amount of $100, exclusive of costs.71 Moreover, the statute authorized an appeal to the Court of Common Pleas and provided that writs of mandamus and prohibition could issue from the higher courts to the city tribunal.

In short, the experiment with the Court of Wardens demonstrated the advantages of a municipal tribunal for Charleston. While various legal and political objections were raised against the judicial power of the wardens, the benefits of a local tribunal were preserved by instituting a more professional forum.72 Further, the abolition of the Court of Wardens also indicates the strong political emotions that could be aroused by the creation of a new court which vigorously exercised its authority. In a sense, the Court of Wardens represented the last stand of 18th century part-time administration of justice by amateurs. Yet, in comparison to the unsuccessful attempt to create county courts in South Carolina during the post-Revolutionary period,73 the Court of

70. Journals of the Senate, December 7, 1801. For an account of legislative action see Charleston City Gazette and Daily Advertiser, December 18 and 23, 1801. The authority of the Inferior Court of Charleston is detailed in 7 Cooper, Statutes, 300-03.
70.1. 7 Cooper, Statutes, at 301.
70.2. Id.
71. In 1802 city council directed that "all fines, forfeitures and penalties" fixed by municipal ordinances and "thereby made recoverable in the court of wardens" should be recovered in the new inferior court. Ordinance of April 14, 1802.
72. The 1801 statute did not resolve all the problems of municipal justice. Complaining of "delays incident to legal proceedings in this District," Charleston residents, in 1818, petitioned the legislature to institute a local court with broadened civil jurisdiction and authority to hear criminal cases "not extending to life or member." The petition concluded: "Charleston at present forms a singular exception, to the large cities of the Union, in being destitute of such a tribunal." For the text of this petition see Charleston City Gazette and Commercial Daily Advertiser, November 7, 1818.
73. For a brief treatment of the abortive effort to institute county courts see Ely,
Wardens must be judged an important first step in the evolution of urban justice in South Carolina.