South Carolina Law Review

Volume 28 | Issue 2 Article 4

Summer 6-1-1976

Mr. Nicholas Trott and the South Carolina Vice Admiralty Court: An Essay on Procedural Reform and Colonial Politics

Randall Bridwell
University of South Carolina

MR. NICHOLAS TROTT AND THE SOUTH CAROLINA VICE ADMIRALTY COURT: AN ESSAY ON PROCEDURAL REFORM AND COLONIAL POLITICS

RANDALL BRIDWELL*

On the Battery in Charleston, South Carolina stands a stone obelisk commemorating the trial and execution of Major Stede Bonnet, the notorious pirate, by Vice-Admiralty Judge Nicholas Trott. Besides this monument, and a forgotten entry in the registry of St. Philips Church in that city which records the death of Trott and his interment in a grave now lost, little commends his name to us as worthy of memory. Trott's commemoration in that solemn monument is hardly suggestive of the excitement which inspired the pirate stories of Daniel Defoe[1] and Robert Louis Stevenson. While Trott played a significant role in beginning the chain of stories popularized by Defoe through his own account of his trial of colonial pirates, he was significant in the development of South Carolina in other, more important ways equally uncelebrated by the monument at the Battery. For Trott in many ways reveals the stuff from which the institutional beginnings of the colony were made, and provides an exciting glimpse of a unique period in the history of South Carolina.

This article will examine a few facets of the legal, political and constitutional problems during the premier period of the colony—the period of proprietary government. Of principal interest

* Associate Professor of Law, University of South Carolina School of Law. The author wishes to express his appreciation for the research assistance of Mr. Eugene Lawrimore and Miss Katherine Hill in the preparation of this article. Additionally, the insights of a colleague, Professor Dennis Nolan, were most helpful. Finally, thanks are due to the Southern Studies Program at the University of South Carolina for their support for research in legal history.

1. Among numerous other scholarly accomplishments, Trott published THE TRYALS OF MAJOR STEDE BONNET AND OTHER PIRATES . . . (1719), from which Defoe took his discussion of the crime of piracy in his pseudonymous HISTORY OF THE PIRATES, published under the name of Captain Charles Johnson, which in turn influenced the fanciful pirate yarns of Robert Louis Stevenson. For an account of Defoe's borrowing from Trott, see Hogue, Eight Charges Delivered at so many General Sessions and Gaol Deliveries. Held at Charles Towne for the Province of South Carolina in the years 1703, 1705, 1706, and 1707. (1972)(unpublished dissertation in Univ. of Tennessee Library) [hereinafter cited as Hogue, Thesis], upon which he based a recent article, Hogue, *Nicholas Trott: Man of Law and Letters*, 76 S.C. HIST. AND GEN. SOC. MAG. 25 (1975) [hereinafter cited as Hogue, *Nicholas Trott*].

will be Trott's focus upon the colonial vice-admiralty court as the object of reform, and his attempts to secure legislation to regulate it. The colonial vice-admiralty court was counterpart to the vice-admiralty court in England, which was the lower maritime court of general jurisdiction.[2] Both the American and English vice-admiralty courts possessed jurisdiction over maritime torts, some contracts, and a number of historically developed special causes related to maritime matters, with the American courts possessing the additional power to try violations of England's numerous statutory navigation and commerce laws.[3] This court was a royal court, with its offices appointed under Crown authority, rather than being under colonial control, as were the other South Carolina courts of the period. As will be discussed, the peculiar proprietary system under which South Carolina operated in this period, in which designated "proprietors" exercised certain governmental powers under a charter from the Crown, was to come into conflict with royal authority exerted through the local vice-admiralty court. The relationship between this royal court and other institutions in the colonial government most clearly illustrates the constitutional friction between proprietary and royal authority during this period.[4] This article will discuss several aspects of Trott's career which highlight this tension between the colonists, proprietors and the Crown and shed some light on the workings of local politics in early eighteenth century South Carolina. Additionally it will provide some insight into the character and activities of principal figures in the early South Carolina legal and political system. A great deal is revealed in the conflict between Mr. Trott and his principal adversaries: Governor Joseph Blake; his brother-in-law, Vice Admiralty Judge Joseph Morton; Mr. Edmund Bellinger, who was the deputy judge of the vice-admiralty court; and James Moore, a member of the upper legislative house, or Council, and governor after Blake.

2. Andrews, *Introduction, Records of the Vice Admiralty Court of Rhode Island 1716-1752*, in 3 AMERICAN LEGAL RECORDS 1-73 (D. Towle ed. 1936) [hereinafter cited as Andrews, *Introduction*].

3. For a clear and accurate account of the jurisdiction of the vice admiralty courts in England, see F. WISWALL, THE DEVELOPMENT OF ADMIRALTY JURISDICTION AND PRACTICE SINCE 1800, at 1-16 (1970). Similar cases in England were heard before the Exchequer, rather than the inferior admiralty courts.

4. For a brief outline of the governmental structure prevailing in early eighteenth century South Carolina, see note 11, *infra*. For a comment on the nature of the proprietary form of government, see text § I.

Blake, who was governor when Nicholas Trott arrived in South Carolina in 1699, came from a distinguished English family which was allied by friendship and marriage with the Morton family. Benjamin Blake, the father of Governor Joseph Blake, and Joseph Morton, father of Vice Admiralty Judge Morton, had both come to South Carolina in the 1680's and had become strong allies from the beginning.[5] The two principal living representatives of these families held, at the time of Trott's arrival, two of the most powerful posts in the colony—the governorship and vice-admiralty judgeship—and were apparently using their official powers for personal profit, a practice Trott was to oppose from the beginning. Edmund Bellinger, a member of the upper legislative house and the deputy judge of the vice-admiralty court, was also strongly allied with the Blake-Morton faction. To a lesser extent James Moore, Blake's successor, was to become Trott's foe. The reasons behind Trott's immediate clash with these powerful colonial officials will reveal much about the structure and constitution of the government itself.

I. EARLY CONFLICTS

A. *The Suspension of Trott*

There is no comprehensive biography of Trott, nor is this writing intended as such. It is my objective here to focus mainly upon those portions of Trott's long and controversial career which relate to the vice-admiralty court—*e.g.*, his efforts in assisting the attempted regulation of that court by the passage of the Admiralty Act of 1701—and what this reveals about the legal and political situation at the time.

A brief outline of Trott's life will nevertheless be useful.[6] He was born on January 19, 1663. Though hardly anything is known

5. E. SIRMANS, COLONIAL SOUTH CAROLINA, A POLITICAL HISTORY 1663-1763, at 36-38, 72, 74 (1966) [hereinafter cited as SIRMANS]; E. MCCRADY, THE HISTORY OF SOUTH CAROLINA UNDER THE PROPRIETARY GOVERNMENT 1670-1719, 194, 199 (1897) [hereinafter cited as MCCRADY].

6. The sketch of Trott's background has been taken from the following sources: for the best overall account, see Hogue, Thesis, and Hogue, *Nicholas Trott*, note 1 *supra;* also T. JERVEY, *Trott, Nicholas*, 18 DICTIONARY OF AMERICAN BIOGRAPHY 649-50 (1936) and bibliography therein; and 1 ANDREWS, COLONIAL PERIOD OF AMERICAN HISTORY, 241 n.2 (1934); M. CRATON, HISTORY OF THE BAHAMAS 84-87 (1962); H. WILKERSON, THE ADVENTURES OF BERMUDA, DISCOVERY TO 1684, at 92 (1958); H. WILKERSON, BERMUDA IN THE OLD EMPIRE 1684-1784, at 3 (1950). Trott was clearly one of the best educated men in the colonies, having been admitted to the Inner Temple at age 32 on June 14, 1695. 4 J. FOSTER, ALUMNI OXONIENSIS: THE MEMBERS OF THE UNIVERSITY OF OXFORD 1715-1886, at 1441 (1887).

of his early education besides his attendance at the Merchant Tailor's School, he was ultimately admitted to the Inner Temple on June 14, 1695 at age 32. His grandfather, also named Nicholas, had been a prominent country squire and at one time sheriff of Hertfordshire. He had several sons, at least two of whom later had sons also named Nicholas. One of Sheriff Nicholas' sons, Perient Trott, had a son named Nicholas who became a merchant, landowner, and finally governor of the Bahamas. He unfortunately had a rather unsavory reputation and was at times confused with Nicholas Trott of South Carolina, his cousin, the son of another of Sheriff Nicholas' sons. Nicholas Trott of the Bahamas, usually known as Trott the Elder,[7] finally married Anne Amy, daughter of Thomas Amy, who had purchased the proprietary share of one of the original proprietors, William Berkeley. Trott the Elder had his younger cousin Nicholas come to Bermuda some time in the 1680's, at which time the younger assisted his elder cousin in legal matters, many of which concerned the Bermuda vice-admiralty court. For example, in 1693 Nicholas the Younger assisted his cousin in successfully prosecuting an appeal to the Board of Trade over the allegedly wrongful seizure of a vessel belonging to Nicholas the Elder. The vessel had been seized by the governor, Richier, a character whom Trott the Younger was instrumental in later having removed from office. The next governor, Goddard, relied heavily upon Trott's legal advice and Trott soon became Secretary of the colony and Attorney General. After some characteristic political infighting in Bermuda politics, Trott secured an appointment as Attorney General, Advocate General and Naval Officer of South Carolina and immediately moved to the mainland colony.[8]

South Carolina operated under a peculiar system of delegated authority under which the Crown purported to transfer by charter certain rights to named individuals, denominated the "Lords Proprietors", who were thereby possessed of a unique if

7. For an account of the historical confusion of Nicholas Trott of South Carolina (the younger) with Nicholas Trott of London and the Bahamas (the elder), see Hogue, Thesis 4-5.

8. A. SALLEY, JR., RECORDS IN THE BRITISH PUBLIC RECORDS OFFICE RELATING TO SOUTH CAROLINA, 1698-1700, at 1-5 (1946) [hereinafter cited as BPRO, with appropriate date]. For Trott's commission as Attorney General *see* A. SALLEY, JR., COMMISSIONS AND INSTRUCTIONS FROM THE LORDS PROPRIETORS OF CAROLINA TO PUBLIC OFFICIALS OF SOUTH CAROLINA 1685-1715, at 113 (1916) [hereinafter cited as SALLEY, COMMISSIONS AND INSTRUCTIONS]. For Trott's commission as Naval Officer see *Id.* at 114-15. His commission was issued on February 5, 1697.

somewhat unsettled constitutional and legal authority, including legislative, executive and judicial powers. Thus South Carolina was established as a "Palatinate," or county Palatine, like similarly constituted counties in England. The Lords Proprietors proceeded to create deputies to effectuate their charter rights in Carolina and looked to these deputies, whose number included the local governor, to represent their interests. The proprietary charter of 1665 contained express references to admiralty jurisdiction, and its general provisions suggested authority sufficient to include all admiralty powers.[9] The charter contained an apparently all inclusive authority to erect courts and appoint their officers. The proprietors were authorized "to erect or make any court, or courts whatsoever, of judicature or otherwise . . . and to appoint and establish any Judges or Justices, Magistrates or Officers whatsoever, as well within the said Province as at sea."[10]

The so-called Fundamental Constitutions of South Carolina were designed to implement this charter and were created largely under the guidance of Lord Shaftesbury, one of the original proprietors. Though the Constitutions were never in force in South

9. For the second proprietary charter, dated 1665, which continued in effect until the collapse of the proprietary government in 1719, see 1 T. COOPER, STATUTES OF SOUTH CAROLINA 31 (1836) [hereinafter cited as STATUTES with appropriate volume]. *See* § 3 for the grant of the Palatinate. On the origins of the County Palatine and the extent of autonomous authority exercised therein, see 6 T. LAPSLEY, THE COUNTY PALATINE OF DURHAM, 12-30 (1924).

10. 1 STATUTES 34.

11. SIRMANS at 10-14. For the first set of the Fundamental Constitutions, dated 1669, see 1 STATUTES 43. As for the general structure of the government, the legislature was bicameral, consisting of the Commons House of Assembly — or lower house — whose members were popularly elected bi-annually, and the upper house, which included the proprietary governor and deputies appointed by the Lords Proprietors. By the late 1690's the lower house had gained the right to initiate legislation and operated under a set system of rules. *See* SIRMANS at 67-71. The Governor and Council, as the upper house, had performed all judicial functions before the creation of courts of general jurisdiction. 5 COL. S.C. HIST. SOC. 324 (1895). It retained the authority to hear appeals from those courts after their establishment. The Court of Common Pleas at Charleston was the first member of the South Carolina judicary, established in 1682, and possessed civil jurisdiction commensurate with its English counterpart, the Common Pleas. This court acquired jurisdiction in criminal cases after 1701, sitting as the Court of General Sessions of the Peace, and heard major criminal cases including those involving the death penalty, and also reviewed matters coming up from the Justice of the Peace. Technical authority to review decisions of the General Sessions was also in the Governor and Council. The subsequent proliferation of the court system is beyond the scope of this work. *See* E. Whitney, *Government of the Colony of South Carolina,* in JOHNS HOPKINS STUDIES (H. Adams ed.) [hereinafter cited as Whitney.].

The royal member of the colonial judiciary was the vice-admiralty court, whose judge and officers were appointed by the crown rather than the Lords Proprietors, and whose

Carolina due to the failure of the Assembly to ratify them as required by the charter, they did reflect the extent of the pretensions of the proprietors over judicial power and offer useful insights into the early constitution of the colony. The Constitutions included the Admiral among the chief officers of the colony[12] and definitely included judicial powers in the colonial Admiral's authority. Each of the eight proprietors was to occupy one of the eight major offices of the colony, and hold a court within his particular area of authority.[13] Moreover, specific provisions of the Constitutions spelled out the judicial capacities under each office. The Constitutions stated:

> The Admiral's Court, consisting of one of the Proprietors, and his six Counsellors, called Consuls, shall have the care and inspection over all ports, moles, and navigable rivers so far as the tide flows, and also all the public shipping of Carolina, and stores thereunto belonging, and all maritime affairs. This Court also shall have the power of the Court of admiralty, and shall have power to constitute Judges in port towns, to try cases belonging to law-merchant, as shall be most convenient for trade.[14]

This proprietors' court was never established under the Constitutions, although the proprietors did go so far as to actually commission a proprietary vice-admiralty judge. Benjamin Blake, the brother of the Commonwealth Admiral Robert Blake, received a proprietary commission as vice-admiralty judge in 1688, but no evidence exists that a proprietors' court was ever established.[15]

---

decisions were reviewable by the High Court of Admiralty or the Privy Council in England. *See* Andrews, *Introduction* at 1-72. The jurisdictional relationship between this court and the colonial common law courts was unsettled.

12. 1 STATUTES 43.

13. 1 STATUTES 46. "There shall be eight supreme courts. The first called the palatine's court, consisting of the palatine and the other seven proprietors. The other seven courts, of the other seven great officers, shall consist each of them, of a Proprietor, and six counsellors added to him."

14. *Id.* at 48.

15. The Proprietors stated in 1696 that they would have considered it "a favor" from the King, if not a right, to be allowed to appoint an admiralty judge. BPRO 1691-97 at 180. It is interesting to note that the proprietors had up until this time exhibited a strong propensity to assimilate the admiralty jurisdiction within the framework of their proprietary constitution — the "Fundamental Constitutions." In their instructions to Governor Philip Ludwell in 1692, the Proprietors reserved the right of the Palatine, or eldest proprietor, to appoint "the Admirall [and] the Marshall of the Admiraltye." SALLEY, COMMISSIONS AND INSTRUCTIONS 10. Additionally, the commissions of the governors of the Province prior to 1695 failed to directly associate admiralty powers with those of governor. However,

Trott, already a seasoned advocate and political veteran, was involved in the affairs of the South Carolina vice-admiralty court immediately after his arrival. However, the extent of proprietary authority over the colonial judicial offices related to the vice-admiralty court, such as the Advocate General or legal offices of the admiralty court, had been affected by the creation of a royal vice-admiralty court. The Crown had asserted appointment power over the Advocate General as well as the colonial vice-admiralty judge. The overt attempts of the Lords Proprietors to claim exclusive authority under their charter to erect colonial admiralty courts and appoint their officers had thus ceased prior to Trott's arrival in the colony, although more subtle efforts were to continue. A royal vice-admiralty court was already functioning. Pursuant to the general plan of reorganizing the colonial judiciary and implementing England's commercial policy in the colonies, Joseph Morton, the proprietary deputy and son of a former governor, had been appointed vice-admiralty judge under a commission dated April 29, 1698.[16] Although the proprietors'

in that year the apparent design to separate those powers was abandoned, and in contrast to Ludwell's instructions of 1692, Archdale was formally commissioned as both governor and "Admirall". *Id.* at 82. (Commission dated August 25, 1694). Under special powers described in his commission, Archdale delegated the admiralty power to Joseph Blake, the deputy governor, with the attendant right to appoint a vice-admiral for the colony. *Id.* at 89. Archdale indicated that he did not want the admiralty power, stating that the proprietors were "pleased, contrary to my Desier, to Conferre on me the Trust & power of . . . & admirall with power of constituting a . . . Vice admirall." *Id.* Any judicial or regulatory authority which these acts might have conferred was, however, soon to become a nullity due to the subsequent appointment of the royal vice-admiralty judge.

Nevertheless, it is certain that the proprietors viewed their charter as sufficient to confer power of a judicial as opposed to a purely executive nature if they chose to do so. A previously undiscovered commission from the proprietors to Benjamin Blake, father of Governor Joseph Blake, attempted to do just that. In a commission signed by Craven and dated May 4, 1688, Benjamin Blake was commissioned "Vice-Admiral and Chief Judge." *See* Miscellaneous Grants and Commissions (manuscript in S.C. Dep't of Archives and Hist.).

16. 1 COLLECTIONS OF THE HISTORICAL SOCIETY OF SOUTH CAROLINA 207 (1857-97). The history of the general reorganization of the customs machinery and the creation of the vice-admiralty courts under the so-called Navigation Act of 1696 has been adequately dealt with elsewhere and will not be treated here. *See generally* C.M. ANDREWS, ENGLAND'S COLONIAL AND COMMERCIAL POLICY (1936); M. HALL, EDWARD RANDOLPH AND THE AMERICAN COLONIES 1676-1703 (1960); Hall, *The House of Lords, Edward Randolph and the Navigation Act of 1696*, 14 WM. & M.Q. 3d. 304 (1957). Regarding the representation made by the proprietors during the period following the 1696 act, specifically as to their charter rights, *see* Andrews, *Introduction* 63. The basic problem was that parliamentary regulation, particularly the Navigation Act of 1696, 7 & 8 W & M c. 22 (1696), had been used by the crown as a basis for establishing a chain of American vice-admiralty courts, patterned after the inferior courts of admiralty in England. The authority to establish such

claims to exclusive authority over the admiralty court were completely routed by the creation of the royal vice-admiralty courts after 1696, the failure to draw any clear constitutional line between royal and proprietary authority in this area continued to cause constant friction between the vice-admiralty court, the proprietary courts, and the colonists, acting through their legislature, who were unsure as to their authority over the new royal court. There was an active conflict between the local vice-admiralty and the proprietary courts under way when Trott arrived in South Carolina in 1699, and thus he was involved indirectly with this touchy constitutional problem at the very outset of his career there.

Trott's instructions from the proprietors indicate that he was held in high esteem by them, and was seen as the possible key to resolving some of the conflicts in the judiciary.[17] Certain of these conflicts involved the relationship between the newly created vice-admiralty court and the Court of Common Pleas, the superior court of the colony. The proprietors had appointed Edmund Bohun as their Chief Justice on May 2, 1698,[18] and Bohun immediately became involved in a clash with the vice-admiralty court. The dispute centered around the jurisdiction of the admiralty court as it affected the powers of the Chief Justice. The basis of the dispute was a question of jurisdiction over two seamen from a vessel recently landed in Charleston.[19] Edmund Bellinger, a

courts and appoint officers necessary for their operation was asserted by the Crown to the exclusion of local colonial authority, and often raised the types of constitutional issues dealt with herein.

17. BPRO 1698-1700, at 10-15 (Instructions dated March 8, 1697).

18. BPRO 1698-1700, at 47, 48; McCRADY 297. Consistent with what the proprietors believed to be their charter powers, they endowed Bohun with as great a set of powers "as any Justice or Baron of any of y[illegible]courts of Westm[illegible]or any of the English Plantations in America." *Id.* at 48. Bohun presided over the court for Berkeley County, which claimed the same jurisdiction as the Court of Common Pleas of England. Until 1732 the chief justice sat alone without the aid of associate justices. For a rough description of the judicial machinery in the colony at this time see Whitney, note 12 *supra*. There are no records for the common pleas prior to the year 1701. There are four types of records in the South Carolina archives directly related to the Court of Common Pleas: The Journals, 1713-1769 (3 volumes); Judgment Books, 1733-1771 (16 volumes); Judgment Dockets, 1739-1773 (2 volumes); Judgment Rolls, 1703-1790. The Judgment Docket is a record related to executions, and the Judgment Roll contains accumulated papers from each case. The Judgment Book contains the documentary history of the case before executions from the first writ to final judgment. The Journals comprise a summary record of each case. For a listing of the legal records in the South Carolina Archives, see M. CHANDLER, COLONIAL AND STATE RECORDS IN THE SOUTH CAROLINA ARCHIVES (1973).

19. An account of the case may be found in SALLEY, COMMISSIONS AND INSTRUCTIONS 121 *ff*, in a letter from the council dated 1699. Wallace refers to Bohun's troubles in the

proprietary deputy, had received a commission as deputy judge of the vice-admiralty court. The master of the vessel reported to Deputy Judge Bellinger that two of his seamen refused to go aboard the vessel. Pursuant to an act of the Assembly, Bellinger committed the two seamen to be kept until the vessel landed, when they were to be returned to the master's custody. Bohun then granted a writ of habeas corpus to the seamen, to release them from Bellinger's custody, but Bellinger nevertheless placed the seamen on board the vessel for departure. Since Bellinger was challenging the authority and jurisdiction of the Court of Common Pleas by refusing to respond to Bohun's writ of habeas corpus, Bohun decided to take action. He directed the Provost Marshall to arrest both the master and the seamen, to commit the master to jail, and to release the seamen. After this was done, the master sought relief from Bohun by petitioning the Council directly. The Council questioned Bohun about his actions and decided to order the master's release. In response to the Council's questioning, Bohun claimed that he had intended to bind the seamen over until the next General Session of the Peace (the Common Pleas Court sitting in its criminal capacity). The Council, however, was unable to find out what crime the seamen had allegedly committed and thus ordered them to be returned to their vessel. Not to be outdone, Bohun advised the seamen to leave behind a power of attorney to sue Bellinger for "false imprisonment." The Council, however, attributed Bohun's motives to jealousy of the jurisdiction of the new vice-admiralty court and to his desire for the fees associated with the case. Bohun persisted and demanded from Bellinger a return of the habeas corpus. Bellinger was unable to produce the departed seamen, and Bohun then committed him to jail. Bohun also sent a writ of certiorari to Vice-Admiralty Judge Morton and Bellinger, seeking to assert his power over all admiralty matters. In the words of the Council:

> The Justice Says he will make y^{e} Judge know he hath Power & will Supersede any business W^{t}soever shall be brought before him in y^{e} Admiralty.[20]

The direct claims of the proprietors to control the admiralty court was thus locally manifest in the efforts of the proprietary

colony, but gives no exact reason for them. *See* 1 D. WALLACE, HISTORY OF SOUTH CAROLINA 222-23 (1934).

20. SALLEY, COMMISSIONS AND INSTRUCTIONS 124.

court of common pleas to override the jurisdiction of the royal vice-admiralty court. Significantly, the council members rationalized the jurisdictional conflict in constitutional terms. The council revealed a disposition in this matter which was quite sympathetic to any existing proprietary claim to the admiralty power, stating that,

> Wee know Your Lordships have Power by your Charter to make Judges of ye Admiralty. Notwithstanding wch his Majesty is Pleased to Commissionate one here now if your Chief Justice Supersede all business shall be brought before ye Kings Judge it will in Effect make his Majesty's Commission Void Whether this be a fit way & time for your Lordships to Claim yr Preerogative in yt Particular Matter your Lordships are better Judges, yn we are.[21]

The proprietors seem to have sided with Bohun, at least formally, but characteristically avoided bringing the prerogative question regarding the admiralty squarely into issue.[22] It is worth noting that Bohun's pretentions were arguably based on precedent since the Court of Common Pleas had earlier dealt with admiralty matters.[23]

---

21. *Id.* Other abuses by Bohun are also mentioned in this document, primarily relating to Bohun's unusual practice of holding the various courts under his authority simultaneously. The Council, referring to this practice, stated that Bohun "Proteus-like, Metamorphosed himself and Court in one ye same hour without Adjournmt: from Judge of ye Pleas, into Judge of Gaol Delivery and anon into Judge of ye Kings bench." *Id.* at 122. For a discussion of the generally unsuccessful attempts of the Proprietors to assert admiralty jurisdiction by virtue of their charters, see Andrews, *Introduction* 63-64; MCCRADY 296.

22. The Proprietors wrote to Governor Blake in a letter dated October 19, 1699, that "Wee are troubled to see that you have not given Encouragemt to our Judge as you ought to have done, but have on ye other hand to vex him been exalting ye Admiralty Jurisdiction." BPRO 1698-1700, at 111.

23. In a letter from the Proprietors to the governor, specific reference was made to the already functioning Court of Common Pleas as having exercised admiralty power:

> The Fundamentall Constitutions of Carolina appointing that for the Ease of ye Inhabitants There Shall be a Court held in every County for ye Tryall of Civill Causes We think it also for ye ease of ye Inhabitants that those Causes, & Processe, & Judgment be entred & Kept by ye Clerke of that Court, and ye Processe and Escecutions served by ye Marshall of that Court, who Respectively are to have & Receive ye Fees appointed And wee would have ye Prothonotaryes place abolished quite Wee knowing noe need thereof And needlesse Offices are ever Burthensom to ye People, But ye Fees of Causes Tryed as a court of Admiralty wee would have goe to ye Secretary till further Order.

BPRO 1685-90, at 129.

Prior to 1682, the judicial business of the colony had been attended to by the governor and Council. In that year the colony was divided into counties with the view to establish-

The proprietors apparently placed great reliance on Trott to solve such conflicts, as their correspondence with both Bohun and Trott cast the latter in the role of a mediator.[24] Bohun was not a lawyer and his practice of attempting to assert the various jurisdictional powers of his court simultaneously revealed his lack of expertise. Without doubt the legal training of Trott was highly valued by the proprietors, who urged him to do everything possible to iron out Bohun's difficulties. The proprietors, however, left no doubt that they had not resigned the control over admiralty matters to the royal court entirely and were quick to point out that they considered Morton's acceptance of a royal commission as vice-admiralty judge a disservice to them, as he had previously occupied positions of trust and power at their favor.[25] This dual line of authority to both the King and the proprietors was to prove a grave weakness in the colonial constitution of the proprietary period.

Continued friction between the Chief Justice and the other courts was averted by Bohun's subsequent death, at which time he was replaced as Chief Justice by James Moore on December 1, 1700.[26] However, the willingness of the proprietary judiciary to assert itself in any given case had demonstrated the existence of

---

ing a court in each. A court was created in Charles Towne for Berkeley County that year, but not in the other counties until late in the eighteenth century. Whitney, note 11 *supra*, at 77-78. Thus the court referred to was the Berkeley Court. No formal records for this court exist for this period. It was this court which claimed the powers of the English Court of Common Pleas, and over which the colonial Chief Justice presided (among his other judicial duties).

24. Writing to Blake on Oct. 19, 1699, the Proprietors stated that "Wee are very glad yᵉ Attorney Generall is arrivd and Desire you to hearken to his advice in all matters of law for Wee greatly approve of what Wee have heard of his proceedings and hope he will continue to give Us that Satisfaction." BPRO 1698-1700, at 112-13. In a letter to Trott dated Oct. 19, 1699, the Proprietors told Trott that "Wee are well pleasd with yor prudent Managemt in yᵉ Affaires of Judge Bohun & Returne you our thanks, Wee are sensible that he likewise has in some things not been so prudent as he should have been . . . ." *Id.* at 115.

25. Writing to Blake and others, the Proprietors stated that, "Wee are somewhat surprised that Our Judge of yᵉ Admiralty should take Another Commission and that Mr. Bellinger who is one of our Deputy's & Surveyor Generall should doe yᵉ like." BPRO 1698-1700, at 101. *See also Id.* at 115 (Letter to Trott from the Proprietors).

Even before the establishment of the vice-admiralty courts under the Crown, the Proprietors had contended that the admiralty powers were vested in them under their charter at a hearing before the Board of Trade. *See* McCRADY 296. When the Board on advice of counsel denied their authority, the Proprietors requested that their governors be made vice-admirals and thus be charged with the admiralty power in the colony. This was also refused.

26. SALLEY, COMMISSIONS AND INSTRUCTIONS 120-31.

unresolved constitutional questions about the limits of proprietary *vis a vis* royal power in the admiralty area. Before the controversy generated by Bohun's pretensions died down, Trott became involved directly in the operation of the new vice-admiralty court. This time the extent of proprietary powers in the admiralty area was brought squarely into issue, and Trott was to take a bold stand on this issue which was to dramatically affect his future success in the colony. As the events of the controversy reveal, the basic constitutional issue of proprietary versus royal authority was sufficiently touchy to make involvement in it a risky business, but for Trott the risks were to prove well worth the taking. The dispute concerned the extent of authority permitted under proprietary commissions in legal areas formally within royal control. Specifically, Trott possessed a proprietary commission as Advocate General of the Admiralty Court, and this office had been declared to be under royal control pursuant to the post-1696 plan for establishing the admiralty courts. As stated, Morton's commission was from the Crown through the High Court of Admiralty pursuant to the Navigation Act of 1696,[27] and an Advocate General had been similarly appointed prior to Trott's arrival. However, Jonathan Amory, the royally appointed Advocate General for South Carolina, had been swept away by the plague of yellow fever which ravaged Charleston in the Summer of 1699.[28] Even though he had no royal commission, Trott was called upon by the governor, Joseph Blake, to prosecute a vessel which had arrived in Charles Towne on December 16, 1699. The vessel, the *Cole and Bean Galley,* had a defect in its registration papers and was not in compliance with the Navigation Act of 1696.

The case of the *Cole and Bean* is interesting because it sheds some light on the unscrupulous use of the admiralty power to condemn vessels for mere technical violations of the Navigation Acts.[29] It also serves to illustrate Trott's opinion concerning the

27. BPRO 1698-1700, at 151-52. 7 & 8 Wm. III c. 22 (1696). It was principally under this statute that the reorganization of the judicial machinery for enforcing Englands maritime commercial policy was carried out, and under accepted interpretations of this act from the law officers of the Crown the King acquired the right to constitute the colonial vice-admiralty judge and their advocate generals. On the jurisdiction of these courts over trade act cases, see Andrews, *Introduction* 4-6. Basically the American vice-admiralty courts possessed the same jurisdiction as their English counterparts, plus jurisdiction over violations of the shipping and navigation laws (concurrent with other colonial courts).

28. F. DALCHO, HISTORY OF THE PROTESTANT EPISCOPAL CHURCH IN SOUTH CAROLINA 35-36 (Tricentennial ed. 1970).

29. Word have previously been sent to the Proprietors that technical violations of the

constitutional power of proprietary appointees *vis-a-vis* the vice-admiralty court and first reveals the nature of the developing political storm which was to nearly extinguish Trott's political career. Apparently a faction composed of Blake, Morton, and Bellinger was actively engaged in turning the admiralty powers to their personal profit. Trott declined to prosecute the vessel, maintaining that he had no official capacity to act.[30] Blake was determined, however, to have the vessel seized and condemned and encouraged Morton to proceed to trial with Bellinger, the deputy judge, acting as both informer and prosecutor.

From this point on the available accounts of the *Cole and Bean* case differ widely.[31] The case concerned a violation of a provision of the Act of 1696, regarding the prohibition against foreign built ships trading with the plantations.[32] According to the

---

Navigation Acts had been serving as a pretense for the seizure and sale of vessels for the enrichment of unscrupulous colonial officials who held proprietary commissions. The proprietors had written Governor Blake in August of 1698, and referred to a former letter from Blake in which the seizure of a Scottish vessel and its allegedly legal condemnation were mentioned. The Proprietors allowed that they had been informed by the English solicitor general that the seizure had been contrary to law. BPRO 1698-1700, at 59. "Wee have seen yᵉ openign of Mr. Sollicitor General a copy of which we have sent you Inclosed whose opinion or yᵉ law you will find to be directly contrary to yours." Referring in the same letter to yet another seizure, the Proprietors related that "Here are great complaints that for yᵉ lucre of having ships condemned they are appraised at half value, and for that value you becomes only answerable if they prove no good seizure which Startled people from bringing a trade to yᵒʳ countrey for fear their ships should be seized your any slender pretence and their not above half value recoverable." *Id.*

30. Trott had so informed the Proprietors, who apparently approved of his actions, though they seemed to have been previously put off by the fact that Morton had accepted the royal commission. *See* letter to Trott from the Proprietors dated Oct. 19, 1699, BPRO 1698-1700, at 115:

> Wee have recᵈ yᵒʳ two Letters giveng Us and Aecᵒⁿ of your Arrival at Charles Towne your being sworne Attorney Generall & Navall Officer, but not Advocate Generall & yᵉ reason thereof.

See also BPRO 1707-1710, at 47-48, where Trott, writing to the Proprietors, stated:

> The said Governor and Council acquainting the said Trott that His Matiᵉ had taken the Admiralty Jurisdiction into his own immediate power: but that one Mr. Jonathan Amory was appointed Advocate General by the King's Commission under the Greate Seal of the Admiralty in England, upon which the said Trott declared he was satisfied and waived any claim to the office of Advocate General by virtue of his said commission from the Lords proprietors.

Upon being instructed by Blake to prosecute the *Cole and Bean* Trott "replied that without he had a Commission from the King he would not act as Advocate Genˡ . . . and withal gave his opinion to the said Bellinger that the said Cole and Bean Galley ought not to be seized." *Id.* at 48-49.

31. For Blake's interpretation of the case, see BPRO 1698-1700, at 132, 144. For Trott's account of the case, see BPRO 1701-1710, at 47-53.

32. 7 & 8 Will. III c. 22 § 16 (1696). *See* BPRO 1698-1700, at 138 *ff* (reference to the petition of the owners of the *Cole and Bean* to the Board of Trade).

owners of the vessel, the *Cole and Bean* had sailed to various of his majesty's plantations without the certification that the ship was English or colonial built among its papers as required by English commercial law. This was due to "ignorance or forgetfullnesse of the Masr or owners."[33] The vessel was in fact legally entitled to trade with the plantations since the owners were able to procure a proper certification in their subsequent appeal to England.[34] Apparently the officers at Virginia and Jamaica, where the vessel previously put in, had considered the failure to maintain the certificate in proper order a mere oversight and were thus willing to take bond for the later production of a proper certificate.[35] The High Court of Admiralty had granted a certificate which qualified the vessel for trading in England and its dominions.[36] Nevertheless, Vice-Admiralty Judge Morton was not willing to be as lenient as the officials of Virginia or Jamaica and interpreted the certification requirement of the 1696 act to permit the condemnation. The precise legal issue was whether or not, in the absence of the proper certificate among the ship's papers, the courts should receive bond for the later production of such documentation rather than proceed to condemnation and if so, what were the conditions precedent for receiving such security. Trott not only risked his public offices on the legal opinion that his proprietary commission was insufficient to confer upon him prosecutorial authority in the vice-admiralty court, but also urged the opinion during the trial of the *Cole and Bean* that the defect in the ship's papers did not constitute grounds for condemnation, and that therefore the court should only take security for their later production.[37]

33. BPRO 1698-1700, at 139.

34. *Id.* at 140.

35. *Id.* at 139-40.

36. *Id.* at 141-42. Note that Blake in his explanation of the case as an afterthought found another ground upon which the *Cole and Bean* could have been condemned. This was the fact that the *Cole and Bean* had illegal goods aboard when she landed in Carolina —several pipes of Canary wine. *Id.* at 145-46. This certificate, however, failed to mention that "it was pursuant to the 7th and 8th of King W*ms* Reign." BPRO 1701-1710, at 49. Trott was thus of the opinion that the certificate of capture and condemnation was all that could legally be required and that security should be taken to procure the register late "in better form". *Id.*

37. The attorney for the defendant was Mr. Henry Wigington. *See* BPRO 1698-1700, at 147. It seems apparent that Trott, though the court refused to hear direct argument from him, was in the background of the case, giving advice to Wigington on the various points of law involved. BPRO 1701-1710, at 49-50. Trott, however, modestly referred to himself as a "spectator."

After some preliminary arguments about the appropriate mode of trial,[38] the defendants petitioned the court to allow them to give security for the later production of the desired certificate. Morton ruled that he would consider doing this if either the ship's captain or supercargo would swear upon their oath that either they had seen the missing registry or had actually heard the owners of the vessel say that they had procured it.[39] They pleaded ignorance to these matters, however, whereupon Morton ordered the vessel condemned.[40] In the meantime, Blake retaliated

38. BPRO 1698-1700, at 156. The question of whether jury trial in such cases could be made a general requirement in the colonies was still at this time quite open. See Andrews, *Introduction* 9-10 for a discussion of a colonial enactment designed to impose this requirement. See text § III *infra* for efforts in South Carolina to make jury trial legally mandatory.

39. Notice that Morton only stated that, if such oath was given he would consider "the reasonableness of ye sd oath or plea." BPRO 1698-1700, at 158-59. Yet Blake in his version of the case allowed that Morton would actually release the vessel if the oath was given. *Id.* at 132-135.

40. The legal arguments on the appeal were apparently the best efforts of Trott and Wigington and were based on at least solid secondary authority. Wigington states that

> I was asked by ye Judge If I could pduce any authority in Law by which I could convince him that there lay an Appeale in our Case I made answer that I had both Law and practice on my side AY but sayes ye Judge can you show me any Law that will admitt or allow of an Appeale to be Granted from a Penall Law and whereby that Law the Forfeitures are directed to be disposed of and besides all this Continues he the Act by which yr Ship is Condemned will allow of noe Essoin protecon or Wager of Law I replyed that an appeal was far different & noe ways alike ye abovesd Instances & enlarged upon them Shewing wt ye Law meaned by them. At last being mightily press'd urg'd to show my Law for an Appeal I offer'd Clerks Prax Cure Adm: & read to him several chapters by which I might convince him that an Appeal lay from a sentence given in an inferior Court of Admiralty to the High Court of Admy in England. I offered likewise a paragraph or two from ye four the part of my Lord Cookes Just cat 27 pg 340 of ye fifth Edit with multitudes of Reasons which I improved from the same. . . .

BPRO 1698-1700, at 147. Very probably the portions read by Wigington are title 50-51 of FRANCIS CLERKE, PRAXIS CURIAE ADMIRALITATIS ANGLIAE (1722) [hereinafter cited as CLERKE. References herein to CLERKE will be to this edition, which is the first English translation of this work to appear]. *See* BPRO 1701-1710, at 50 (Trott states that he "urged that the Owners ought to be allowed an Appeal to England which the said Judge Morton positively denyed"). Trott interprets the court's position on this point as further evidence of the corruption of the court, since they knew that "if the owners had been allowed an Appeal upon Security given, they might have their Ship and Goods, which they were resolved to share amongst them." *Id.* If the appeal and security were refused, the court would be liable only for the appraised value of the wrongfully condemned vessel. If the vessel were under valued, as was allegedly the case here, the officials abusing the admiralty process might still come out with a handsome profit, having the benefits of a sort of court-enforced bargain.

Regarding Trott's suggestion that the resolution of the *Cole and Bean* case stemmed more from greed than from lawyerly analysis, see BPRO 1701-1710, at 49; see also a letter from Edward Randolph, presumably to Popple, dated May 27, 1700, in which Randolph relates that

against Trott for his refusal to prosecute by calling a meeting of the Council and suspending him from his offices.[41]

Thus by executive fiat Trott was thrust out of every official position he held. Although beaten out of his public offices, Trott utilized his position as a private attorney to draw Blake's authority into question in another area. A commission was empowered by colonial enactment to deal with certain funds designated for the construction of a fortress at Charles Towne.[42] Funds allegedly within the terms of the statute were in the hands of the administratrix of the recently deceased public receiver, Jonathan Amory (who had also held the royal appointment as Advocate General), and Trott represented her against the demands of the commission for the money. Curiously, Trott's recent adversaries, Governor

---

> Mr Blake the present Govern[r] of this Province drives a fine Trade of seizeing and condemning vessells right or wrong, he is sure to be the gainer, haveing the Judge always on his side, and his Creatures at his back to Appraize them, and their Lodings some times at not half their first Cost, by means if the Judgm[t] be Confirm'd, his maj[ts] third part comes to little, but if the Judgment be reversed and Orders are Sent to make Satisfaction to the Owners, they come off with very great Losse besides trouble & charge, as Mr Renne's Case.

BPRO 1698-1700, at 165-66.

Further, Randolph states that the

> Cole and Bean Gally of London Paul Welch Master cost in London £1200: with the charg to Fit her out, She was bought by George Logan one of the Appraysers for L 755: Carolina money for the Govern[r] he has sent her to the Bay of Campeech to Load Logg-wood, and intends to sell her, and her loading at Currassao, her Cargo cost L 2700: in London, tis appraised here at L 1740: 19: 3 ½ by George Logan, James Stanyon a Planter, and one Lewis Pasquerea, one who is the Govern[rs] Clark and lives in his house in Town, and y[e] Govern[r] has One third part of those goods at the appraised value, and a Bond is given to the Collect[r] for his Maj[tys] third part of £755 . . . .

Id. at 166.

Randolph in this letter relates other accounts of alleged complicity between the governor and his brother-in-law, the vice-admiralty judge. If these accounts can be accepted as truthful, Trott's allegations as to corrupt practices in the court were certainly not overstated. The mere relationship between the various individuals involved, family and otherwise, certainly raises the spectre of corruption that the facts do not seem to contradict. *Id.* The *Cole and Bean* decision was reversed on July 31, 1701. *See* BPRO 1701-1710, at 50. *See also* J.H. SMITH, APPEALS TO THE PRIVY COUNCIL FROM THE AMERICAN PLANTATIONS 145 *ff.* (1950).

The Attorney General of England was asked certain questions in connection with the appeal of the *Cole and Bean* case. Responding to Mr. Popple, Secretary of the Lords Commissioners, Attorney General Thomas Trevor stated that he felt that Edmund Bellinger was legally qualified to prosecute the *Cole and Bean* case, but that the denial of the appeal was incorrect. BPRO 1698-1700, at 168.

41. BPRO 1701-10, at 50. *See text*, § II, *infra.*

42. 2 STATUTES 117, provided that funds from taxes on imported liquor and exported skins were to be used by the commission in the construction of the fortress.

Blake and Judge Morton, were on the commission, as was the newly appointed Chief Justice, James Moore. Trott challenged the action for debt brought by the commissioners, first by questioning Moore's authority to hear the case since Moore was "one of the plts in the Suite against the Defendt and therefore cannot sitt Judge in his own Cause."[43]

Judgement was apparently given against Trott, and in a motion for arrest of judgment Trott questioned the power of such a commission generally, arguing that it was contrary to the nature of the Palatine constitution of the colony.[44] Trott even questioned the the authority of the present governor to act in any official capacity at all, alleging that

> [t]he said Joseph Blake Esq. one of the Plts in the Declaration is styled Governor when he hath no Commission for Governor of the province of Carolina from the Lords Proprs neither is he allowed and approved of by his Majestye according to the Act of the 7th and 8th of King William the Third Entituled an Act for preventing Frauds and Regulating Abuses . . . and therefore for want of such Commission & allowance and approbation from His Majesty cannot maintain an action as Governor of this province.[45]

---

43. BPRO 1701-1710, at 65.

44. Trott alleged that

> there is no Body Polytick in Carolina Constituted by the stile or Name of the Public Weale and Impowered to sue or be Sued, Neither can such a Body Polytick be constituted in Carolina by Act of Assembly or any other way or means: For that the Province of Carolina is by Royal Charter constituted a Palatinate under the Government of a Palatine and the rest of the Lords Proprs: And the Admitting of or setting up a Public Weale or Common Wealth in the said Palatinate is an utter subversion of the Government and destroying of that Charter by which alone it is that any power is derived to make and Constitute Laws.

Id. at 67.

There being no such body naturally "Neither are the plts Impowered to bring action in the Name of the Public Weale." *Id.*

45. *Id.* at 67-68. The other grounds for arrest of judgment are listed here. The Act mentioned by Trott is 7 & 8 Will. III c. 22 § 16 (1696). As far as the legality of Blake's acting even if he had no commission, the Act provides no penalty for failure to seek approval from the King, but the governor could only be removed if he was shown to have failed in his enforcement of the Navigation Acts. Thus the question of whether or not Blake had a commission may be different from the question of his authority to act. As to Blake's commission, he was appointed by Governor Archdale when the latter departed from South Carolina in November 1696. SALLEY, COMMISSIONS AND INSTRUCTIONS 98. Blake had also given security for the execution of the Acts of Trade as required by the 1696 Act. *Id.* at 104. He had likewise given his oath to enforce the Acts before Edward Randolph in 1698. M. HALL, EDWARD RANDOLPH AND THE AMERICAN COLONIES 1676-1703, at 191 (1960).

Blake retaliated by calling a special meeting of the Council, at which he charged Trott with having

> seditiously denyed and Disowned the Rt Honble Joseph Blake Esqr one of the True and absolute Lords and Proprietors of the Province of Carolina: To be Governor of Carolina which is a notorious breach of His Maties Peace tending to the distraction and Disturbance of the people and the Alienation of their Affections from his Majesty & his Government. . . . All which is contrary to Law.[46]

The arrest of Trott was ordered so that he might be held to stand trial on these charges at the next session of the General Sessions of the Peace for Berkeley County. Trott posted bond with two men as his sureties for the sum of 100 pounds to insure his good behavior and appearance at the trial.[47] As appeared later in the course of Trott's successful efforts to remove the suspension from public office and regain the support of the Board of Trade, Trott's antagonists also attempted to prevent Trott from practicing law before the court of Charles Towne after this confrontation.[48]

Trott had at least succeeded in identifying his adversaries.

The requirements of royal approval contained in the 1696 Act applied to governors appointed after the effective date of the Act, but contains no penalty for failure to do so. The Act did require security and oath for the performance of the obligations of the Act, both of which Blake had given. The argument made by Trott thus appears more technical than substantive.

46. BPRO 1701-1710, at 54. Present at the special meeting were Joseph Morton, Edmund Bellinger, James Moore and Henry Noble in addition to Governor Blake. Every one of these men except Noble had been involved in the *Cole and Bean* affair as Trott's adversaries.

47. *Id.* at 55.

48. In a letter dated April 7, 1702 Trott laid his case before the Commissioners regarding his protracted clash with the governor and other officials, and attempted to justify his conduct. *See* BPRO 1701-1710, at 47-53. Trott states that he had been thus far unable to get a decision from the Proprietors with regard to his suspension from his office due to the *Cole and Bean* matter and that as a result of the Amory business, James Moore, Judge of the Common Pleas had "silenced the said Trott from pleading in the Courts." *Id.* at 52. Trott also said that Moore, Morton and Blake "as much as in them lay utterly disabled him from living, they silencing him for practiceing the Law, which is his profession." *Id.* at 53. Since Moore was Judge of the Common Pleas and Morton was Vice Admiralty Judge, their ability to suppress Trott's livelihood was considerable. Trott does seem to have managed to participate in at least one case during the period prior to his official restoration in 1702, before the Court of Chancery in Charles Towne. J. FRIESON, INTRODUCTION, RECORDS OF THE COURT OF CHANCERY OF SOUTH CAROLINA 1671-1779, at 67-69 (A. Gregorie ed. 1950) (referring to the case of *Jane Scott v. George Logan*, June 21, 1701). It will be remembered that George Logan was one of the appraisers in the *Cole and Bean* case and was considered by Trott, as well as by Edward Randolph, to be guilty of misconduct. *See* BPRO 1698-1700, at 166.

He was subsequently to wage a total war against them, both in colonial politics and with the proprietors. Ensuing political changes within the colony were to cause a split in the faction aligned against Trott, primarily composed of Blake, Moore and Bellinger. These changes were also to provide Trott with an opportunity to shift his tactics from official and professional action (which had now been almost completely foreclosed by his enemies) to popular appeal. The constitutional issue of royal versus proprietary authority over the judicial business of the colony was to become Trott's sword against his old enemies.

B. The Breakup of the Faction Against Trott

Nothing appears in the records as to any subsequent trial on the matter of Trott's "sedition," probably due to the fact that Governor Blake died during the following month, September of 1700. Notwithstanding Blake's death, Trott's adversaries might have successfully and continuously managed his suppression since James Moore was elected by the Council to succeed Blake. However, there appears to have been a split between Morton and Moore caused by their rivalry for the office of Governor. The proprietors were disturbed with Morton for having accepted a commission from the Crown as vice-admiralty judge. They had earlier written to both Blake and Trott expressing surprise at Morton's action.[49] It was during this period that the control of the vice-admiralty court was being taken over by the King pursuant to the Act of 1696, under which royal vice-admiralty courts were established in the colonies. Since the proprietors were doubtless aware of the massive reorganization of the revenue machinery which was taking place, perhaps their indignation evidenced not so much an assertion of their own authority to appoint vice-admirals as disappointment in their deputy for taking the office. Yet details of the brief struggle for the governorship after Blake's death reveal that perhaps colonial as well as proprietary opinion

49. In a letter to Joseph Blake and the Council, dated Sept. 21, 1699, the Proprietors stated that they were "somewhat surprised that Our Judge of ye Admiralty should take Another Commission. . .", also complaining that Bellinger had done the same thing. BPRO 1698-1700, at 100. However, their reference to Morton as "Our Judge of ye Admiralty" does indicate some arrogation of the power to appoint this official to themselves.

The letter to Trott further bears out his latter observation, since the Proprietors state that "Wee are much surprised at those Transactions and wonder that our Judge & Surveyor Generall should Accept Commissions from Any else . . . ." BPRO 1698-1700, at 115. The letter is dated Oct. 19, 1699. *See* SALLEY, COMMISSIONS AND INSTRUCTIONS 131.

had not as yet completely resigned control over the admiralty court to the king. Morton himself attributed his failure to succeed Blake to the fact that the members of the council had been convinced, apparently by Moore, that it was a breach of trust for him to accept a commission from the Crown as vice-admiralty judge.[50]

The alignment of the votes of the six proprietary deputies regarding Blake's successor also throws some interesting light on the decline of the faction composed of Blake, Morton and Bellinger, which had so successfully pushed through the prosecution of the *Cole and Bean*. At the meeting to elect a successor, held September 11, 1700, Edmund Bellinger was nominated by Morton, but only Morton voted affirmatively and the other deputies, whom Morton had described as Moore's faction, voted against Bellinger. The "negants" were Henry Noble, Robert Gibbes, Robert Daniell, and James Moore.[51] Then the question of Morton's succession was raised, and Morton received affirmative votes from Henry Noble, Robert Gibbes and Edmund Bellinger, with negative votes from Moore and Daniell. Moore then objected to Morton as governor because of the latter's acceptance of the admiralty commission from the King. After Morton's protests, the members also discussed possible objections to Bellinger. Moore objected to Bellinger because he had received a commission from

50. In a letter of August 29, 1701, apparently to the Commissioners of Trade, Morton rails against the difficulty in enforcing the Acts of Trade, which he feels have provoked the people of the colony, since the Assembly had approved an act for regulating the Admiralty Court that entailed jury trial. *See* text, § II, *infra*. *See also* BPRO 1701-1710, at 17 *ff*. Morton also related that he had other problems since the death of Blake, stating that:

> By the constitutions of this Government & the Instructions of the Lords Proprietors it was my right to succeed him [Blake] in the Government. But a combination was formed against me (only because I was in His Majestys service) by Capt. James Moore and others of the Councill who voted me incapable of the Government because I had made a breach of my Trust to the Proprietrs in accepting a Commission from the King to be Judge of the Admiralty here that office being in the disposal of the Proprietors: Whereupon I was excluded and the sd Capt. Moore was chosen Governor & Soon after the said Act was past wch in the former Governor's time was in vain attempted and had I had my right (they knew) could never have been effected. BPRO 1701-1710, at 17-18.

Morton was referring to the "Act for the Better regulating the proceeding of the Court of Admiralty in Carolina And the Fees for the same." *Id.* at 19.

Thus it appears that the death of Blake dissolved a difficult obstacle in the path of the reform of the Admiralty Court, which Morton of course tactfully chose to view and describe as an attack on the Navigation Acts and a threat to their enforcement.

51. BPRO 1701-1710, at 70-71. On Moore's claim to succeed Blake, see RIVERS, SKETCH OF THE HISTORY OF SOUTH CAROLINA 454 (1856) [hereinafter cited as RIVERS, SKETCH].

Morton as Deputy Judge of the admiralty. At this point Moore was elected by a majority of the council. Thus, according to Morton's own words, the death of Blake had broken up a coalition between the executive and the vice-admiralty court which had served as a successful buffer to the reformation of the practices of that court. The old animosity between Trott and Moore dating back to the Amory affair still persisted. But it was an animosity on Moore's part which was apparently independent from any link, financial or otherwise, with the vice-admiralty judge.

Most significantly, this episode revealed a less than vigorous support for the Crown vice-admiralty system, especially if the Proprietors' objection to Morton's appointment is to be interpreted as a desire to preserve some element of authority over the court. This interpretation of proprietary wishes seems to have well served the interests of Moore in his move to the governorship. The Proprietors were familiar with the procedure by which colonial officials would make grand claims for proprietary authority on a case by case basis, allowing the Proprietors to disavow these pretensions if questioned by superiors, a practice not unknown in twentieth century politics. This technique had been used earlier in conjunction with the colonial court's assertions of freedom from the application of the Navigation Acts,[52] which the Proprietors righteously repudiated when questioned on the matter. Whether or not we can point to discreet evidence of proprietary encouragement of colonial foot dragging in implementing the Act of 1696 and royal control of the vice-admiralty system, no direct encouragement would have been necessary. The Proprietors' language in expressing their dissatisfaction with Morton cleverly leaves open the question of the grounds upon which they objected, and it was left to the colonials and their politics to work out the rationale. Thus it is possible to make several observations about the actual success of the English plan to monopolize the vice-admiralty courts. Specifically, the suggestion of proprietary dissatisfaction with Morton for having taken another commission certainly indicates that the struggle for the control of this crucial

52. BPRO 1685-1690, at 15. The local courts were not alone in contending that the proprietary charter affected the applicability of the Acts to the colony. The Proprietors had, in fact, unsuccessfully maintained that the Act of 1660 was superceded by their charter of 1665. L. HARPER, THE ENGLISH NAVIGATION LAWS, A SEVENTEENTH CENTURY EXPERIMENT IN SOCIAL ENGINEERING 191 n. 45 (1973). The Proprietors also claimed the admiralty power under their charters at the hearings before the Board of Trade after the Act of 1696. MCCRADY 296.

court had not ended with the passage of the Act of 1696. The Proprietors arguably still considered it to be in their best interest to maintain whatever *de facto* control over this office they could, hoping that their deputies and officials would go along with the game. The pitfalls of such an approach were made obvious by subsequent events. The potential for personal gain might overcome loyalty to the Proprietors in a man like Morton. The Proprietors then would not only lose what they perceived to be the last thread of a chance to salvage something in the constitutional struggle over this court by maintaining some grass roots control, but would also earn royal displeasure at the abusive or corrupt use of admiralty powers and the mishandling of the navigation laws. Since royal displeasure was the greater danger, it would seem that the key to the successful operation of the proprietary system, insofar as it could be effected by the admiralty court, necessitated the management of the court by one who could resist the pecuniary temptations it offered and thus avoid embarrassment to the Proprietors. Unfortunately for the Proprietors, Morton was not such a man. The immediate result of this proprietary policy was vigorously expressed dissatisfaction in England with the apparent abuses of the Morton court. And Trott placed himself in the royalist camp, at least ostensibly, by focusing upon Morton's admiralty court as the object of his reform efforts after he moved from officialdom and the courthouse to the legislature.

II. NICHOLAS TROTT, LEGISLATOR, AND THE ADMIRALTY BILL

The vice-admiralty court was a touchy issue from the outset, both for the Proprietors and their colonial representatives. Though the power to control or appoint the officers of the court was one which the Proprietors and the colonists ceased to claim openly, the exact extent of the power of the Proprietors or colonists to affect or regulate the court was unclear, as we have seen. Some friction between the vice-admiralty court and the colonial system was inevitable. However, the lack of absolute clarity in the constitutional position of the vice-admiralty court not only served to explain the occasional subject matter dispute, such as occurred between Bohun and Morton over the delinquent seaman, but also provided a plausible excuse for the exertion of proprietary power over the procedures and other aspects of the Court.

Any threat to the effective operation of the court caused by interference by or on behalf of the Proprietors, or any threat to

English commercial policy perceived by the officialdom at home, would necessarily embarrass the highest colonial officials, the vice-admiralty judge, and ultimately the Proprietors themselves. This feature of the colonial government — the constitutional provisions which created dual responsibility, both to the crown and the Proprietors — was to profoundly affect the colony during the later proprietary period. Trott was thereby provided with a unique mechanism by which to exert a type of pressure that would be quickly felt in England, and bring the displeasure of the Proprietors to bear upon his colonial adversaries. This mechanism entailed the selective use of legal reform measures designed to embarrass his political adversaries, and "reform" thus was usually a shorthand term for political warfare. The reforms advocated usually raised touchy constitutional questions, and through such constitutional tinkering Trott made himself a serious obstacle to his adversaries, and began his campaign for recognition and restoration to power.

The methods employed by Trott in exploiting the constitutional ambiguity of the proprietary government provide a telling insight into both Trott's character and the institutional weaknesses of the colony. Having been checked in his official as well as private professional efforts, Trott moved into politics, with his eye still on the admiralty issue. He had sought election to an assembly called by Governor Blake before his death, and was elected as a member from Berkeley County, as well as Speaker of the House.[53] During the first session of the lower house, which convened March 20, 1700, Trott, acting as Speaker, presented the first statute concerning admiralty practice in the colony.[54] In ref-

53. Salley, *Judge Nicholas Trott,* The State (Columbia, South Carolina), March 18, 1923, at 29-30. See also SALLEY, COMMISSIONS AND INSTRUCTIONS 135-39.

54. There had previously been no significant action of a legislative nature with regard to the admiralty, hence there were no statutory guidelines as to jurisdiction, powers of the court, fees etc. Additionally, though Sir George Carteret had been elected in a meeting of the Proprietors in England, Oct. 21, 1699 to fill the post of Admiral under the Fundamental Constitutions to implement that plan, he never actually functioned in that capacity. It is not clear, moreover, just what he would have done had he tried to do so. *See* RIVERS, SKETCH 346. The next legal act which might have affected some exercise of the admiralty power appears in the set of Temporary Laws sent by the Proprietors to the colony in 1671. These laws directed the Grand Councill to act as the Colonial Court until the Fundamental Constitutions could be further implemented, which they never were in this regard. The chief justice of the colony was to elect court officers including the Admiral and Marshall of the Admiralty. *Id.* 351-52. This was apparently not carried out since the Proprietors soon changed their instructions by issuing another set of temporary laws, dated June 21, 1672. The Proprietors were to fill the offices of Admiral and Marshall of the Admiralty

erences to the bill made in correspondence with the Lords Proprietors, Blake and the Council revealed something of their personal views as to the source of the proposed law, and the reasons for its creation. In a letter to the Proprietors dated May 17, 1700, Blake and the council stated that they had

> reason to believe Mr. Speaker proposed itt & drew up yᵉ house of Comons that bold and unreasonable Act for yᵉ better regulating yᵉ Proceedings and fees of yᵉ Admiralty to make yᵉ Judge of yᵉ Admiralty and his Deputy uneasie or onely Titular Judges, and that he proposed all yᵉ other new things (for by him they were proposed) in yᵉ house to make us all uneasie because of his Suspension.[55]

As to the precise reasons for objecting to the bill, the council alleged that the act as drafted by Trott and proposed by the Commons

> [W]holy took away yᵉ Admiralty Jurisdiction so far as it may or ought to have any relation to yᵉ Acts of Trade & Navigation, & limited all matters & disputes arising by said Acts, to be triable only in yᵉ Court of Exchquer which Wee Conceived Contrary to yᵉ Practice of England all his Majesties Plantations & all Proprietarys in America & to yᵉ sence of said Acts And in Effect by Oblidging yᵉ Informers of matters of Fact done Contrary to Said Acts to give unreasonable Securities & to pay Extravagant Damages made yᵉ Said Acts unpracticeable even in their own Court of Exchequer for all which reasons we in yᵒʳ Lordships Names told them we Could not pass such a Bill. . .[56]

For these reasons Governor Blake refused the bill.[57]

Assuming that the bill as originally proposed provided for the things that Blake alleged, his position in rejecting it was legally

---

under these laws, but the governor and Council could fill vacancies in those posts until the Proprietors made their appointments. None of these things were ever done, apparently. The Grand Council did, however, exercise admiralty power on occasion.

As McCrady stated:

> A Commission in admiralty had been authorized by an Act passed in Colleton's time. But as yet there was no Vice Admiral, no Marshal, no Clerk, no court organized for that purpose. . . . While the Lords Proprietors were amusing themselves with the making of Landgraves and Caciques, and bestowing upon them baronies, and manors, for the practical business of administering justice, they had no Attorney General . . . .

McCRADY at 258.

55. SALLEY, COMMISSIONS AND INSTRUCTIONS 138.

56. *Id.* 136.

57. *Id.*

sound, though the matter was certainly open to some debate. Though Randolph had advocated the use of the colonial courts of exchequer in his original proposal for implementing English commercial law in the colonies, and this proposal had received some support among the colonial governors,[58] the actual implementation of the plan primarily involved the admiralty court rather than the exchequer. The prevalent legal opinion was that the colonial vice-admiralty courts possessed at least concurrent jurisdiction over trade act cases. Though common law courts in the colonies could exercise concurrent jurisdiction over violations of the 1696 act, any attempt to completely eliminate the jurisdiction of the newly established vice-admiralty courts would have been highly questionable.[59] It would certainly have been contrary to the plans of those such as Randolph, who wishes to regularize and strengthen the enforcement of customs law in the colonies. It is thus difficult to imagine why Trott would have attempted such an assertion of authority. If in fact he did, such an attempt hardly supports a characterization of Trott as a "king's man", which might be drawn from his position in the Amory case involving Blake's commission. Further, it is difficult to determine whether or not Trott viewed the expansion of the jurisdiction of the exchequer as an appropriate price for antagonizing Blake and his adversaries on the Council. The Council would have acted as exchequer for such cases, assuming Blake's characterization of the proposed act to be correct. Blake and the Council obviously considered such an expansion of their jurisdiction insufficient to offset the problems which could stem from proprietary displeasure, not to mention that of the Crown, should any such open attempt be made to subvert the crown policy regarding the colonial admiralty jurisdiction over trade act violations.[60] Such a reform would be contrary to the low profile which the Proprietors had come to prefer in such sensitive constitutional questions. Apparently, then, Trott was exerting his influence in the house

58. Hall, *"The House of Lords, Edward Randolph and the Navigation Act of 1696,"* 14 WM. & M.Q.3d 504 (1957). *See also,* M. HALL, EDWARD RANDOLPH AND THE AMERICAN COLONIES, 163 (1960); Andrews, INTRODUCTION 11-12.

59. It was not until some years later, in 1702, that the Board of Trade proclaimed the opinion of the English Attorney General that violations of the 1696 Act were triable in the colonial vice-admiralty courts. There were, however, continuing differences of opinion on the subject, and the concurrent jurisdiction of the vice-admiralty courts and other colonial courts took some time in establishing itself. See Andrews, *Introduction* 6, 12 n.1.

60. SALLEY, COMMISSIONS AND INSTRUCTIONS 135-39.

primarily to place those responsible for his suppression in a position of embarrassment.

Although we have no copies of the Admiralty Bill in its successive stages, this jurisdictional feature was apparently immediately abandoned. The subsequent discussions of the bill omit any reference to this feature, and its final form when passed had no provision for placing jurisdiction in the colonial exchequer. But any permanent resistance from the governor to the passage of the bill was soon removed, for Governor Blake died on Sept. 7, 1700.[61] The death of Blake was to have a profound effect on future efforts to reform the admiralty court and upon the career of Nicholas Trott. As discussed above, Moore succeeded Blake as governor and called a new assembly[62] to which Trott was again elected as member from Berkeley County.[63] Again the Commons House passed, with amendments, the "Bill for regulating the proceedings in the Court of Admiralty in Carolina and the fees of the same."[64]

61. NARRATIVES OF EARLY CAROLINA, 1650-1708, at 221 (A. Salley ed. 1911).

62. Apparently the difficulties Trott caused to the governor and Council during the first Assembly were partially responsible for the sanctions against him in the Amory affair, in which Trott was silenced by "disbarment" a month before Blake died. *See* Salley, *Judge Nicholas Trott*, The State (Columbia, South Carolina), Mar. 18, 1923, at 29, col. 4.

63. JOURNAL OF THE COMMONS HOUSE OF ASSEMBLY, October-November 1700, at 3-4 (A. Salley ed. 1924). [hereinafter cited as JOURNAL with appropriate date]. Trott received 159 votes, the twelfth highest total. Trott was proposed as speaker but not elected. Mr. Job Hows, one of the Trott's bondsman in the Amory case was, however, elected. *Id.* 5. *See* 1 O'NEALL, BIOGRAPHICAL SKETCHES OF THE BENCH AND BAR OF SOUTH CAROLINA 3 (1859).

Other events in Trott's career in the legislature indicate his persistent antagonism to the government and his great influence in the House. In addition to the Admiralty Bill, the House took an interest in other judicial matters in which Trott was involved. On November 16, 1700, the House requested that the governor order Mr. Wigington to withdraw the action for debt which had been brought against Mrs. Sarah Rhett as administratrix of the estate of Jonathan Amory, at "ye sute of the Weale Publick." JOURNAL Oct.-Nov. 1700, at 358. (A subsequent act directed Mrs. Rhett to pay over the balance of Amory's accounts as public receiver. *Id.* at 365.) Obviously Trott's opinion about this matter carried great weight among the Commons.

Earlier in the same month, a more interesting glimpse of Trott's legislative activities appeared. A question had arisen as to the applicability of an act of Parliament forbidding members of Parliament from holding other public offices to the colony. Trott was appointed to a group which carried the opinion of the Commons House on the subject to the Upper House. The formal opinion was that the English Act was not binding in South Carolina until made of force by a colonial enactment, but that the policy behind the English statute was good. Thus it was recommended that the Chief Justice should forsake his commission, since he was also a member of the Upper House, as should the Judge of the Admiralty and the Deputy Judge of the Admiralty, together with his other offices of Surveyor General and Receiver General. *Id.* 8-9. This suggestion was naturally declined.

64. JOURNAL Oct.-Nov. 1700, at 6. We have no record of the various stages which the

The Upper House responded after about a week by rejecting the bill. In the message from the Upper House by Edmund Bellinger, the Commons House was told that although the bill was rejected,

> they were ready to pass another bill for Regulating ye fees of ye admiralty & proceedings of ye sd court, and that there should be a Jury for Tryalls in said Court and yt they had formerly Passed an act for this Province to Establish ye Common Law, and yt if the House thought that not Sufficient, for holding of sessions, Desires this house to prepare another Bill for the same. . .[65]

That same day a committee of four men was appointed to take the response of the Commons to the Upper House.[66] The Commons response was,

> By ye message sent this house by Edmund Bellinger Esqr we are Informed that their Honors have Rejected ye Bill of the Admiralty, yett they will Pass a Bill Regulating ye Court of Admiralty wth Juryes, The fees and Pceedings which were Incerted in the former act. Therefore if they please to Returne the sd Bill. . . and Informe us in Every Pticular. . . what their Honors Reject, we shall Taken them into our Consideration.

The Upper House replied that the procedures in the proposed act were too complex and would delay the disposition of causes in the admiralty court.[68] The Commons House then requested some information from Joseph Morton as to what rules of procedure he presently used in the admiralty court.[69] In response Morton ". . . Tould Them yt his Rules are in Clarks Practice, and Good Dolfin, and That he had Noe written Rules for ye sd Proceedings."[70] The assembly adjourned until the following February, when the revised Admiralty Bill was passed with amendments.[71] The Bill was

---

Act went through, but the Act appears in final form in 2 STATUTES 167.

65. JOURNAL Oct.-Nov. 1700, at 11. The message was delivered in Nov. 6, 1700.

66. *Id.* 12. Trott was not on the committee.

67. *Id.* The fees referred to were probably those created in a former act, an Act for Ascertaining Publick Officers, 2 STATUTES 143. *See* JOURNAL Oct.-Nov. 1700, at JOURNAL Oct.-Nov. 1700, at 6 for the section pertaining to the admiralty courts.

68. JOURNAL Oct.-Nov. 1700, at 14.

69. *Id.*

70. *Id.* 16-17. Andrews has stated incorrectly, that "Good Dolphin" was not used in the colonial vice-admiralty courts. *See* Andrews, *Introduction,* 3 n.2. The reference was to one of the better known extant treatises, J. GODOLPHIN, VIEW OF THE ADMIRAL JURISDICTION, ETC. (1661).

71. JOURNAL Feb.-Mar. 1701, at 3-4.

sent to the Upper House and apparently that body desired to work out the specifics of some of the amendments, since the Commons House appointed a committee to meet with the Upper House on the suggested changes, and requested the appointment of a similar committee from the Upper House.[72] Nicholas Trott was one of the members of the committee from the Commons House.[73]

This meeting was the source of renewed friction between the new governor, James Moore, and Trott. In the report of the Committee of the Commons House on February 19, 1701, it appears that while the eighth rule of the proposed bill was being debated in the joint meeting, Governor Moore asserted that Trott had intentionally inserted a dilatory rule later in the act. Trott replied that the Governor was "to fast" and that the discussion on that point should wait until later. The Governor took Trott's particularity in parliamentary matters as an affront, and declared that Trott had insulted him. Trott replied that he was entitled to speak freely since he felt Moore was sitting only as a committee member and not as governor. Moore, however, would have no more discussion with the committee in which Trott was involved, and dissolved the conference.[74] Trott was replaced and in a later meeting the differences between the two houses were worked out, and the Bill was made law on February 27, 1701.[75]

Vice Admiralty Judge Morton immediately attempted to convince *both* the Assembly and the Board of Trade that the Act was harmful to the admiralty court.[76] Having little luck with the Assembly, Morton sought to convince the Board of Trade that

> The people here in general are very averse from a complyance with the Laws of Navigation and Trade, which will evidently appear from the Inclosed Act of Assembly which was lately past on purpose as in them lay to elude the force of His Majesties

72. *Id.* 10.

73. *Id.* 11. The scarcity of legal talent in the colony during that period, plus the choice of Trott to work out the differences about the admiralty bill, strongly suggests his involvement and participation in the creation of the bill.

74. *Id.* 12.

75. *Id.* 13-18. *See* SALLEY, COMMISSIONS AND INSTRUCTIONS 148.

76. Morton attempted to persuade the Upper House to request a repeal of the Act from the Commons asserting that the Bill was ". . . Contrary to the Laws of England Derogatory from and in a Great Measure Destructive of y^{e} Powers Granted to him by his Majesties Commission to be Judge, of y^{e} Court of admiralty for this Part of y^{e} Province as well as Dangerous to y^{e} Interest of y^{e} Lords Prop^{rs} . . ." JOURNAL Aug. 1701, at 18. The Commons failed to take Morton's objections seriously.

> Commission to discourage & frighten all His Officers by meanness of the fees and the greatness of the Penaltys; And by imposing Jurys thereby to be sure of a Strong party against the Acts of Trade wch most of the Jurymen seldom fail to be.[77]

The jury trial provision of the Admiralty Act prescribed that juries were to be selected in the same manner as in other Courts,[78] where juries were selected by placing the names of the freeholders in a box, from which twelve names would be drawn by a child under ten years of age.[79] Under this system, it is difficult to imagine how a jury could have been packed to avoid the enforcement of the Trade Acts. One would have to assume that the majority of the populace would consistently be opposed to the acts in order to be persuaded by this objection alone.[80] Morton probably found more to grumble about in other sections of the Act. If the judge violated any rules or orders contained in the Act, he had to pay damages and double the costs of the suit to the complainant,[81] and any such action survived the death of the complainant.[82] The judge was to be subject to an action for debt if he charged more

77. BPRO 1701-1710, at 17. For the sections of the Act dealing with jury trial, see 2 STATUTES 167; *id.* 169 (for § 1, paragraph 17 of the Act, dealing with the procedure for calling juries); *id.* 172 (for § XI of the Act, prescribing the cases in which jury trial is to be used); *id.* 172 (for § XXII on trial of damage issues).

78. 2 STATUTES 172 (§ XI of the Act).

79. 2 STATUTES 96. Though Cooper here indicates that no copy of the original act can be found, it can be located in Nicholas Trott, Laws of the Province of South Carolina (Act 119, manuscript in S.C. Dep't of Archives and Hist. pp. 54-61). This Act was passed in 1695 and repealed by 3 STATUTES 286 in 1731. There had been a previous attempt to pass a jury act in 1692, found at 2 STATUTES 76. The act, which applied to all matters, civil or criminal, required the sheriff in each county to divide the population into various groups of twelve, putting the names of each group on a piece of paper. Two such papers would be drawn by the sheriff, and then he would draw one of the two to serve as jurymen. The Proprietors rejected this Act, stating that it would lead to the failure to punish enormous crimes, "especially Pyrace, for it will thereby be in the power of the Sheriff to divide the twelve for each piece of paper, that there shall be in every paper some notorious favorers of Pyrates. . . ." RIVERS, SKETCH 436; MCCRADY 250-51. The Proprietors had apparently insisted on the plan finally adopted by the 1695 Act, since it corresponded to the jury provision that was contained in the fourth draft of the Fundamental Constitutions. *See* BPRO 1691-1697, at 125. The series of attempts to put the Fundamental Constitutions into effect is a topic beyond the scope of the paper, but the Jury Act is an example of a process of de facto adoption of certain principles in the colonial legal system which were not adopted by virtue of assent to the Constitutions themselves.

80. The Lords Proprietors had indicated that they desired the jury verdicts to be unanimous, but no indication as to whether or not this became the hard and fast rule can be found. *See* BPRO 1691-1697, at 125-26.

81. 2 STATUTES 167, 170 (§§ II and III of the Act).

82. *Id.* (§ III of the Act).

than the amounts listed in the fee schedule of the Act.[83] The registrar of the court was required by the Act to keep thorough records of the admiralty proceedings in a public office, and was subject to an action for debt in the amount of fifty pounds if he failed to do so.[84] Another provision, strangely reminiscent of the flaws which Trott found in the *Cole and Bean* case, prescribed mandatory security after appraisement in seizure cases, with possession of the vessel to be delivered to the master or owner after security was given.[85]

The Board of Trade requested the opinion of Dr. Newton (advocate of the Lord High Admiral) on the matter, who agreed with Morton, stating that

> . . . the said Act, is very prejudiciall to the Judge and the other Officers of the Admiralty there, by subjecting them to suites & Penalties they were not otherwise lyable to: Derogatory to the Commission by which the Judge of the Admiralty there Acts; the Course of Proceedings being very different from what is Practised in the High Court of Admiralty here, and those matters refer'd to Juryes, which are in the Judges owne power to hear and Determine both by the Maritime Laws and the Tenor of his Commission; whereby great delays may be Occasioned; and the Subjects Remedy by Appeal quite taken away.[86]

The Board of Trade sent Newton's opinion to the proprietors.[87] The final result was the repeal of the Act in 1703.[88] By this time, Trott had returned to power, having been commissioned as Chief Justice by the Proprietors and restored to his offices at the request of the house, so he apparently posed no obstacle to the repeal of the bill. The Proprietors had written instructions to Governor Johnson, who had succeeded Moore in 1702, stating

83. *Id.* (§ IV of the Act). The highest fee was three pounds.

84. *Id.* 171 (§ V of the Act).

85. *Id.* 172 (§ X of the Act). It is tempting to see the hand of Trott here, and also in the substantive provisions of the Act.

86. BPRO 1701-1710, at 29. For other testimony incorporating Morton's assessment of the colonial juries, see a letter to the Board of Trade by Robert Quarry. *Id.* 28-29.

87. BPRO 1701-1710, at 31-33.

88. 2 STATUTES 214, 215. The Act was repealed by a bill enacted May 8, 1703.

It was also the arrangement under the proprietary government that all acts passed by the colonial assembly were to be immediately sent to the Proprietors for approval. The acts would expire if not approved within two years. This system gave the colonial assembly the ability to pass laws which would be binding for the duration necessary for proprietary disallowance. Whitney 53. However, this particular act was formally repealed. *See* 2 STATUTES 214.

that they had received various complaints from the Commissioners of Trade and Plantations about the Admiralty Bill, though they had failed to receive a copy of it.[89] They directed Johnson to inspect the Act and make "all ye necessary & due alterations."[90] Johnson's response was to persuade the Lower House to assent to the repeal of the Act in April of 1703, and the repeal became final the following month.[91] Trott's interest in the matter seems to have faded as his fortunes turned upward.

In the context of the Proprietors' struggle to preserve their charter powers in this area, the unsuccessful legislative attempts to regulate the admiralty court must be regarded as a defeat. We are left without any precise assessment of the division of powers between the Proprietors, the colonial assembly and the crown. The disposition of the admiralty court was again blocked by one of the endless series of ad hoc problem resolutions in the constitutionally vague proprietary system. The Proprietors again receded into the background, apparently powerless to win anything more than a passing victory, through either the actions of their deputies or colonial assemblies. In view of this result and Newton's opinion, the power of the colonial assembly to regulate the procedures used in the vice-admiralty courts seemed doubtful (as a matter of power if not constitutional interpretation).

It is not clear whether the attempted passage of the Act represents a general colonial resentment to the Acts of Trade, and a desire to avoid them by using partisan juries or merely some general attachment to the practice of trial by jury. It is doubtful that the Act was intended solely as a method of avoiding the enforcement of the Acts of Trade by insuring the use of partial juries in admiralty trials, because the house first proposing the bill did not include such a provision. The jury trial provision was only added at the behest of the Upper House, which seems to have considered this element critical to their approval of the bill. Aside from the fact that there were many other aspects of the jury system which the colonials would have considered more important than its usefulness in avoiding the king's revenue laws, this portion of the bill seems incidental to the other provisions when one considers the process of formulation in the Lower House. The

89. SALLEY, COMMISSIONS AND INSTRUCTIONS 168-70.

90. *Id.* 170. The complaints from the Commissioners were likely prompted by Morton's correspondence. *See* note 76 *supra.*

91. JOURNAL 1703, at 57, 60-61; 2 STATUTES 214.

bill contains many other distinct procedural devices apparently aimed at remedying the chronic problems of the admiralty court, and thus the jury trial provision was not likely a facade behind which to effectuate a plot to escape the Trade Acts.

Certainly we cannot point to one all inclusive, concrete explanation of the bill, but other facts tend to cast light on the reasons for its creation, and emphasize that the impact of Mr. Trott on the early legal system was of more significance than general ideological explanations for the Admiralty Bill. Arguably it is more than coincidence that the introduction of the bill corresponds with Trott's first election to the Commons House. Trott went to the assembly fresh from practice before the vice-admiralty court, still smarting from his clashes with the allies of the vice-admiralty judge, and was probably the best educated man in the colony. It is unlikely that he would have failed to make his well documented views of that court evident to this friends and collegaues in the House, one of whom had served as Trott's security in the action by the commission over the public funds and was speaker during the second Assembly in which Trott was a member. It is unlikely that his views would fail to gain the respect of much of that house, in which he had been elected speaker during his first term, and which would unanimously work for his later restoration to public office. It is certainly likely that they would have employed the talents of one knowledgeable on the subject of admiralty practice, and who was responsible to some degree for drafting the bill, in the representation of its position before the Upper House. Trott served on the Commons House Committee, and Blake's reference to the bill as first proposed in the session of March, 1700 confirms that Trott was the drafter of the bill and the moving force in the attempts to secure its passage from the very beginning. The remedies provided in the Act, (e.g., the security provisions), reflect Trott's experience before the Colonial Court. Trott must have anticipated Morton's immediate complaints to the Board of Trade about the Act. However, this was the result Trott desired, since it immediately produced displeasure with the colonial administration, principally Trott's adversaries on the Council, from both the crown's representatives and the Proprietors. Further the Act was itself a source of grief to Morton, because of the stiff penalties provided for judges who ignored its provisions.

To a large extent the Act may be accounted for as the product of Nicholas Trott, whose attempts at reform seemed to center

around the admiralty court. Though the Act was ultimately repealed it was perhaps enough that Morton could see the handwriting on the wall. The specific proposals in the bill, as characterized by Blake in its original form, Moore's later resistance to the bill because of its dilatory aspects, and Morton's resistance suggest that the bill was not the result of the efforts of a detached reformer advocating a consistent constitutional theory. Trott apparently acceded to the jurisdictional provision in the final act, which selected the admiralty court over the exchequer. He also apparently lost interest in the Act altogether once it had assisted his return to public office. Thus the Act seems to represent primarily a vehicle for effecting discreet political pressures which would serve Trott's interests. As in the case of his objections to Blake's commission, Trott was eager to use his particular expertise in order to upset the plans and positions of his adversaries.

III. TROTT'S RETURN TO POWER, 1702

When Trott's fortunes began to turn, they seemed to do so to the extreme. Subsequent to his restoration in 1702, Trott accumulated political and legal powers that cannot be separated from the subsequent history of the vice-admiralty court or the colonial court system generally. One example of this is that there were no writs of prohibition against any action in the admiralty court after Trott's appointment as vice-admiralty judge in 1716. The reason is that the prohibition would have had to come from Trott himself, who was Chief Justice in addition to being vice-admiralty judge. The details of this period reveal Trott as a consummate pragmatist with the admiralty court as but a single facet of the judicial machine which Trott operated almost single-handedly. The machine fell into his hands after his restoration at the behest of the assembly. Trott had complained to the Board of Trade about the whole series of injustices which he felt he had suffered in South Carolina,[92] and had raised the matter in the colonial assembly in January, 1702. Because of the difficulties in the colonial government, James Moore was never confirmed as governor by the Proprietors, and was rendered too weak to resist Trott's new bid for authority. The assembly had unanimously recommended the removal of Trott's suspension, prompted by the notification of the reversal of the *Cole and Bean* decision,

92. BPRO 1701-1710, at 47. (Letter dated April 7, 1702).

which vindicated Trott's position in that case, and illuminated Trott as the only reliable and authoritative source of valid opinion in the constitutional dilemma over the admiralty power. Trott had staked a great deal on his legal position in the *Cole and Bean* case, and the final vindication of his stance there occurred in the formal reversal of Vice-Admiralty Judge Morton's opinion by the Privy Council, where the case had been taken on appeal. For Trott, the timing was perfect, occurring as it did at the height of his influence in the Commons House, and it added welcome fuel to his criticisms of Judge Morton and his allies. The overwhelming popular support for Trott in the wake of the *Cole and Bean* reversal illustrates this clearly.[93] The new governor, Nathaniel Johnson, arrived in South Carolina in 1703, carrying Trott's commission from the Proprietors as Chief Justice of the Colony.[94] In his subsequent activities in the colony and his frequent travels to and from England, Trott gained more expanded powers. Although he had formerly lost no opportunity in asserting positions which were embarrassing to the officers of the Lords Proprietors,

93. The details of Trott's restoration are another interesting commentary on his influence in the Commons House, and the apparently widespread belief in the connection between Trott's suspension from public office and his antagonism toward the Admiralty Court. On January 20, 1702, Trott requested an audience before the Commons House to present his views about his suspension. It was ordered that he be heard and it appeared that Trott "was suspended for not prosecuting the Cole & Bean Galley which prosecution and judgment is since revised by the Lords Justices of England in Council." JOURNAL Jan. 1702, at 81. The House voted to address the Governor and the Upper House and request Trott's restoration. On the following day the address to the Upper House, requesting his restoration was engrossed in the House records and signed by the speaker - a practice not usually employed for messages, but reserved for formally passed bills. *Id.* 82. In the address the House alluded to Trott's refusal to prosecute the *Cole and Bean* as being the apparent reason for his continued suspension and stated that "whereas the prosecution and decrees in the Court of Admiralty in Carolina being since reversed and declared null and void by order of the Lords Justices in England it is therefore with submission to your Honors the unanimous request and address of the House that the said Nicholas Trott may be restored and reinvested in his said offices of Attorney General and Naval Officer of this province." *Id.* The Upper House replied on January 23, 1702 that the matter would receive their utmost consideration, but the Commons House responded the same day by making their request even more specific - requiring immediate restoration and instruction from the Governor to those occupying Trott's former posts that they were to give up the offices forthwith. *Id.* 86-87. An answer was received from the Governor on January 26. The Governor and Deputies at the Council meeting held on January 24, had voted to reinstate Trott as requested. *Id.* 92-93. *See* SALLEY, COMMISSIONS AND INSTRUCTIONS 151-53.

94. MCCRADY 390, 720-21. For the Proprietors' new acknowledgement of Trott as Attorney General and appointment of Trott to a group of officials empowered to convey lands of the Proprietorship to colonists see BPRO 1701-1710, at 47. Trott was also made a Proprietary Deputy. Moore, however, soon took over the Attorney General's post. MCCRADY, 721.

he seemed to lose his zeal for criticizing the proprietary system and gained a keen interest in becoming the most powerful part of it. After a series of trips to England and much correspondence with the Lords Proprietors between 1708 and 1714, Trott gained a seat on the Council,[95] was essential to the creation of a quorum of the council of deputies for ratifying laws passed in the colony,[96] and maintained his position (and salary) as Chief Justice of the Colony despite his absences.[97] Once he regained favor with the

95. BPRO 1711-1716, at 61. Colleton appointed Trott to the Council on July 27, 1714.

96. BPRO 1711-1716, at 66.

97. BPRO 1711-1716, at 57-58, 66. There is some confusion as to when Trott officially became Chief Justice. McCrady lists Trott as having become Chief Justice in 1702, but as being replaced by Robert Gibbes between the years 1709-1713, and then resuming the office until 1719. Yet a letter from the Proprietors to Governor Tynte, dated Feb. 3, 1710, advises detaining Gibbes' commission, stating that Trott's commission had not been entered as it ought to have been by the former secretary of the Proprietors. BPRO 1701-1710, at 316. SALLEY, COMMISSIONS AND INSTRUCTIONS 234. Further the Proprietors later refer to Trott's commission as having been given on March 8, 1706 and refer to it as still being in full force as of Sept. 8, 1714. BPRO 1711-1716, at 67-68. If the same commission was still in full force as of 1714, then Gibbes' appointment can probably be considered to have been intended only as an interim expedient by the Proprietors, who continued to concentrate judicial power in Trott's hands. The Proprietors, who continued to concentrate judicial power in Trott's hands. The Proprietors had only appointed Gibbes due to the fact that Trott was on a voyage to England. SALLEY, COMMISSIONS AND INSTRUCTIONS 221. The Lords Proprietors acknowledged that they reposed "especial trust and confidence in the said Nich. Trott our Chief Justice." *Id.* Trott was also given the power to appoint the provost marshall, but this authority was later revoked, as was his power to constitute a quorum on the Council and thus determine the laws which were approved. BPRO 1711-1716, at 152. The revocation of powers is dated March 3, 1716. The assembly had issued a proclamation to the Lords Proprietors stating that they considered the possession of such powers by the Chief Justice as detrimental to the well being of the colony. The question of Trott's official capacity as Attorney General between 1702 and 1706, the latter date being acknowledged by the Proprietors as the date of Trott's official commission, is thus somewhat cloudy, though he appears to have acted as Chief Justice and to have been regarded as such by the colonists. RIVERS, SKETCH appendix 459. Thus the Proprietors' reference to Trott's commission as having become effective in 1706 seems to refer to technicalities in the commissioning process, recordation and the like, as opposed to a signification that he had not acted as Chief Justice before then. Gibbes' appointment is found in BPRO 1701-1710, at 228.

Trott apparently continued to act as Naval Office after his restoration to his offices. The Proprietors had appointed Edward Hyne as Naval Officer of South Carolina on December 11, 1708. BPRO 1701-1710, at 226. Hyne deputed Nathaniel Sale to act as his deputy, but because of Governor Johnson's friendship with Trott, Sale was not admitted to act as deputy and Trott fulfilled the post. BPRO 1701-1710, at 300. Apparently the Proprietors had not issued an official written order approving Sale as deputy.

Trott had also pleased the Proprietors by his compilation of laws in force in the colony, which the Proprietors ordered transcribed for their use. BPRO 1711-1716, at 69. These laws had been compiled prior to 1712.

Trott's popularity clearly began to decline after he used his influential position in the Commons House to secure his restoration to proprietary offices, and had accumulated new

Proprietors in 1703 and secured high public office, Trott quickly lost the popular support which was so critical to the removal of his suspension in 1702. Public opinion had so completely turned against him thereafter that a representative of the House of Commons laid a remonstrance before the Queen in 1706 complaining of the abuses and unfitness for office.[98]

The concentration of powers in Trott's hands became virtually complete when he was made vice-admiralty judge in 1716. The records of the Trott Court begin on November 3, 1716 with the court exercising the full range of admiralty powers.[99] Trott

offices and powers. This very body which assisted his return to power passed a resolution in 1706 shortly after Trott's assumption of the office of Chief Justice which directed that a remonstrance be sent to the Queen to complain of Trott's corruption. See McCRADY 456 *ff*; RIVERS, SKETCH 244.

98. McCRADY 457; RIVERS, SKETCH 245.

99. After Morton, there were two other vice-admiralty judges in the colony, John Turnbill in 1708, and Thomas Nairne in 1710. Yet the records reveal hardly anything of significance during that period in the way of references, complaints, etc. concerning the admiralty court. The records contain a reference to the seizure of a vessel by Governor Craven in 1715, on the complaint of the supercargo that the master of the vessel had illegally detained the goods belonging to a passenger. BPRO 1711-1716, at 92. The supercargo was a merchant from Jamaica. Governor Craven was apparently quite willing to hold the goods, which contained many valuable items of jewelry, for safe keeping. He was ultimately instructed by the Proprietors to give the goods back to their owner, the Marquis of Navarre, after the Board of Trade became interested in the matter. BPRO 1711-1716; at 146, 149. The authority of the Vice-Admiralty Court was apparently not involved in the affair.

Before Trott's appointment Governor Robert Daniel also exercised the power of the admiralty court. Governor Daniel authorized the then Attorney General, Mr. George Rodd, to draw up a warrant for the seizure of a vessel which lay in Charles Towne Harbor. The vessel had allegedly been dealing with pirates. The warrant was prepared by Rodd and signed and sealed by Daniel, and directed the Marshall of the Admiralty to seize the vessel in the name of the Lord High Admiral of England. This was done, but the Collector of Customs, Col. William Rhett, disputed Daniel's authority over the vessel and proceeded to remove the allegedly illegal goods from the vessel. He was aided by a British officer, Captain Howard, who was in command of a British man-of-war in the port. The continued resistance of Rhett and the involvement of the crew of the man-of-war in an armed confrontation between the Governor and Rhett over the seized goods, brought the whole situation to crisis proportions, and resulted in an inquiry before the Governor and Council. Rhett, being carried away with his success in removing the goods from the vessels before the Governor could intervene, took the opportunity to vent his dislike for the Governor in the process by calling the Governor an "Old Rogue", "Old Dogg" and the like and shouting many "Loud Huzza's"; Rhett was also alleged to have been "continuing in his foresaid postures with an additional turn . . . of his Backside" toward Governor Daniel. The intended effect of this was unfortunately missed by Governor Daniel, who in his deposition allowed thet he "Dare not affirm it for a truth because I have not seen this last part of his anticks." BPRO 1711-1716, at 217 *ff*. The testimony of all witnesses to the dispute was taken by written interrogatories in which each deponent was "duly Sworne on the holy Evangelists." Thus, in a curious combination of executive and judicial authority, the

temporarily left the colony in 1719 on the collapse of the proprietary government, and was at the fall of the government the primary object of the complaints of the colonists, particularly with regard to his judicial activities. He was both Chief Justice and vice-admiralty judge and was perceived by many of the colonists as one who unscrupulously abused his multiple judicial powers. They subsequently sent a representative to the Proprietors with a complaint containing thirty-one counts of judicial impropriety on Trott's part including references to the fact that he held so many judicial offices that no prohibition could be issued against him.[100]

Just as the pre-1716 court felt the pressure of Trott's efforts on numerous occasions, as advocate, official or legislator, so was the post-1716 court, in which he was vice-admiralty judge, caught in a constitutional dilemma which was in large part of his making. For the first few years of recorded admiralty adjudication in South Carolina, it is extremely difficult to make any statement about the relationship between the admiralty court and other courts in the Colony, since virtually all the other courts, at least those which would have affected the admiralty court by prohibi-

---

procedure of the admiralty court and the terminology of the civil law infused itself into a meeting of the Council. The subject matter of the dispute, clearly an admiralty matter, apparently influenced the Governor to follow the form of the admiralty court in a sort of afforced session of the Council. It is further unclear whether or not this particular council was in any way distinguishable from the Governor and Council which usually comprised a part of the colonial assembly.

Probably the whole event was considered sufficiently significant to warrant a meeting of the Council, since Col. Rhett, the Collector of the Port, was involved, and the admiralty practice and terminology was carried into the Council along with the case by way of supervisory or appellate authority of the Council in the judicial business of the colony. For the interesting events of the case, see BPRO 1711-1716, at 191-232.

100. HEWATT, A NARRATIVE OF THE PROCEEDINGS OF THE PEOPLE OF SOUTH CAROLINA IN THE YEAR 1719 (1726). *See also* Whitney 29.

As to Trott's honesty in his perhaps unfortunate monopoly of the most critical judicial offices of the colony, Wallace states that Trott was "grossly partisan, unscrupulous in controversy, and self-seeking; but no evidence has come down to us sustaining charges of corruption." 1 WALLACE 176.

For Trott's later life in South Carolina, prior to his death in Charleston in 1740, see Hogue, Thesis, *supra* note 1. The latter part of Trott's life was devoted mainly to scholarship, and his publications attest to his qualifications. In 1719 Trott published an edition of *Clavis Linguae Lanctae*, a translation of the Hebrew Psalms. This provided the basis for his later work on translation of the Hebrew biblical texts, his copy of which has unfortunately been lost. In addition to his account of the trial of the colonial pirates in London in 1719, Trott was honored by the award of a doctorate (D.C.L.) from Oxford on May 23, 1720 and a doctor of laws degree (L.L.D.) from the University of Aberdeen on April 8, 1726. The laws which he compiled for colonial use were later carried down to 1719 and published in Charleston by Timothy Lewis in 1776.

tion or otherwise, were composed in whole or in part of Nicholas Trott.

It is entirely possible that the complaints about Trott represent merely the chronic grievances of the disappointed suitor, who might easily have mistaken a distasteful judgment for dishonesty and corruption. Trott, rightly or wrongly, was responsible for the lack of a remedy for those judgments. In all fairness to Trott, it is as likely that the failure of the government and the courts during this period resulted from an institutional mistake rather than a mistake about Trott himself. The concentration of too many related powers and duties in one individual, made possible by the dual constitutional system, would certainly have hidden the conscientious exercise of that power from all of those who had from time to time been on the losing side in his courts.

In any case, the arrival of Trott in South Carolina represents a significant turning point in its judicial history. It signalled the introduction of English legal training into the colonial judicial system, and a break with the practice of staffing the courts with non-lawyers, such as Edmund Bohun of the Common Pleas. It represents the first viable link with the legal tradition of England and the sophistication of her courts and bar. In many ways Trott represents the first infusion, the first lasting "reception", of English legal civilization into this colony. Even those who villify Trott acknowledge him as the "father" of South Carolina courts,[101] as he doubtless was. The premier compilation of South Carolina statute law, out of which sprang much later codification, and the profound impact of his learning on the complicated and often volatile constitutional system in the proprietary period alone would justify his memory. But, beyond that, the phenomenal physical and mental energy released in a society barely past the stage of tentative settled wilderness reveal Trott as a product of an age *sui generis* in its excitement and opportunity, an age from which originated today's bench and bar, and which ought not be forgotten.

101. MCCRADY 690.