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SOUTH CAROLINA  
COURT OF  
GENERAL  
SESSIONS  
1769-1776

South  
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SOUTH CAROLINA  
COURT OF  
GENERAL SESSIONS  
1769-1776

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INTRODUCTION

Of the few records of colonial South Carolina's criminal court known to be extant, the journal filmed here is the only one that documents the workings of the colony's criminal justice system. The others—a coroner's inquisition dated November 29, 1740, a document containing the grand jury's presentments to the court session beginning on March 15, 1758, and what are probably citizen's copies of a warrant of commitment and a recognizance bond—are scattered papers, too few in number to reveal much about the system.<sup>1</sup> The journal contains brief descriptions of crimes brought to trial, gives the names of the accused and sometimes of an accuser or a victim, and illustrates conviction and sentencing patterns. In addition, it gives the names of presiding judges, defense attorneys, and jurors, and includes full texts of the presentments submitted by the grand juries each session. The journal covers a transitional period. It was compiled while South Carolina was deeply involved in pre-Revolutionary War activities, and it documents the transition from a statewide court system to a circuit court system.

From its inception, the court had served the entire colony but met only in Charleston—a situation that left residents in the backcountry virtually deprived of its justice because of the distance to be traveled. Over the years, the Assembly made some abortive attempts to correct the problem. Finally, in 1769, it passed a circuit court act, but only after agitation in the backcountry over the absence of local courts, jails, and other aspects of law and order had culminated in the formation of the Regulators, who pushed for reform while imposing their own brand of justice on the area.<sup>2</sup> Three years later, after courthouses and jails had been constructed in the districts of Beaufort, Camden, Cheraws, Georgetown, Ninety Six, and Orangeburg, colonists living in areas remote from Charleston benefited from courts closer to home; the court in Charleston heard cases involving crimes committed only in Charleston District.<sup>3</sup>

The history of the Court of General Sessions dates from 1671. The court dispensed justice and administered the law in criminal

cases to the white population in South Carolina.<sup>4</sup> When it first sat, the court did not operate independently. It functioned from within the Grand Council—a provincial body that resembled the English Privy Council in that it acted, among other things, as an executive council and as a court of appeals. Until 1698, members of the council presided over criminal trials and included them in their day-to-day business. On May 22, 1698, when the Lords Proprietors appointed a chief justice, the court became independent.<sup>5</sup> Then in 1731, when the provincial Assembly passed an act “for the better administration of justice in criminal causes,” and established a “Court of General Sessions of the Peace, Oyer and Terminer, Assize and General Goal [sic] Delivery” in the provincial capital of Charleston, the court achieved statutory recognition.<sup>6</sup>

Court procedure followed English judicial practice. In 1712 when the Assembly had passed “An Act to put in force in this Province the several Statutes of the Kingdom of England,” it had adopted, with some modifications, English criminal law as the basis for South Carolina’s legal system.<sup>7</sup> The chief justice presided, usually with two or more assistant justices, and at various times, the court required the attendance of the provost marshal, the sheriff of Charleston District, the public treasurer, justices of the peace for Charleston District, coroners, constables, and other officials. At the beginning of a session, the court seated justices; drew names for a jury pool that would be used to select the grand jury and petit juries for the following session; announced commissions; and read orders. When the grand jury was seated, the chief justice, or, in his absence, an assistant judge, delivered his charge to the jurors on points of law he considered significant.<sup>8</sup> The court selected petit juries as cases appeared, required individuals whose names made up the jury pool to attend throughout the session, and fined as defaulters those who were absent without an excuse. The court heard cases either when the attorney general presented one as an “information” or when a grand jury, acting on one presented to it as a bill by the court, returned it as an indictment, or a “true bill,” because it believed there was sufficient evidence to warrant a trial. Besides reviewing cases, the grand jury acted as a watchdog over public

administration. Petit juries reviewed the trial evidence and brought in the verdicts. At the end of a session, the court issued orders and read and approved the minutes.

The selection of both the grand and petit juries, as the act of 1731 noted, followed steps laid out by an “equal, indifferent and impartial method” that had been used in the colony for years. Through acts passed by the Assembly, the court was provided from time to time with a “general list” supplying the names of taxpayers who were eligible for jury service. The court used this list at the beginning of each session to draw by ballot the names of prospective jurors. In the first three years of the period covered by the journal filmed here, the coroner for Berkeley County, the public treasurer, and one of the justices presided over each drawing. After May of 1772, the sheriff of Charleston District and one justice presided. Grand jurors qualified by having “paid the sum of five pounds current money or upwards for their last preceding tax,”<sup>9</sup> and petit jurors by having “paid the sum of twenty shillings current money or upwards.” To protect the accused, no juror could serve as both grand juror and petit juror on the same case.<sup>10</sup>

Besides the benefits they derived from safeguards built into the jury system, South Carolinians accused of a criminal offense were protected by the act of 1731 as well. The act entitled the accused to see their indictments, to call witnesses, to use the advice of counsel, and to have either one or two attorneys assigned for their defense.<sup>11</sup> In addition, once convicted of a criminal offense, the criminal could often reduce the sentence by requesting benefit of clergy—a practice that had been instituted originally to remove the trials of clerics accused of a capital crime from the king’s court, where the death sentence could be imposed, to ecclesiastical courts, where a “judgment of blood” could not be entered. Subsequent legislation had specified the types of crimes for which the benefit could be received and had broadened the category of those who could receive it—first to include literate males and later to include all males and females, literate or not. Benefit of clergy could be used only for a first offense, however, because having once used it successfully, those convicted “were branded in the brawn of the left thumb with a

“T” for theft and an “M” for other offenses, as evidence that they had exhausted their clerical immunity.”<sup>12</sup> The journal records many instances of individuals who substituted branding for hanging by requesting benefit of clergy.

An act passed in 1767 required the court in Charleston to hold three sessions each year—in January, April, and October. Then in 1769, the circuit court act changed the sessions in Charleston to February, May, and October and instituted April and November sessions for the circuit. The change went into effect in 1773 when the circuit courts began to operate.<sup>13</sup>

The journal spans eight years and includes proceedings of twenty-three court sessions. The volume is one of a series—it begins in the middle of the April session in 1769 and ends on the second day of the October session in 1776. William Simpson, who was appointed chief justice on January 24, 1768, presided over the first sessions, and Thomas Knox Gordon, who was appointed on May 13, 1771, followed Simpson. Gordon served until William Henry Drayton was appointed on April 12, 1776. Assistant judges who served during the period were Thomas Bee, Wellins Calcott, Matthew Cosslett, John Fewtrell, William Gregory, Rawlins Lowndes, John Mathews, John Murray, Daniel D’Oyley, Henry Pendleton, George Gabriel Powell, Robert Pringle, and Edward Savage.

Like others before them, the grand jurors who served between 1769 and 1776 weighed evidence, returned indictments, and monitored public administration. They inspected and reported on the condition of public roads, bridges, and ferries, on the performance of public officials, and on the expenditure of public funds. On January 25, 1771, for example, when the grand jury presented its grievances, it drew the court’s attention to the “want of a proper law for the more effectually lighting the Streets & Alleys in Charlestown” and to the “extreme bad condition of the public Roads throughout the province.” It also noted “that the Militia and Patrol Acts are not properly enforced” and lamented the “great number of Dram-Shops & Tipling houses in Charlestown such as entertain Negroes and other disorderly persons.”<sup>14</sup> And in April of 1776, the grand jury, responding to Chief Justice William Henry Drayton’s catalog of “some of the

most weighty” of “our Oppressions,”<sup>15</sup> included in its presentments an indictment of “the unjust, cruel and diabolical acts of the British parliament.” The people, the jury said, had been obliged “to resume into their hands those Powers of Government—which were originally derived from themselves” because “it was the scheme of a corrupt nefarious Administration in Great Britain to reduce the good people of this Colony” almost to a “Herd of Brutes.” The session that April had opened, as always, with a series of orders, but this time, the court included an order requiring that “all writs and proceedings of this Court which formerly run or were had in the name of the King do in future run and be had in the name of the Colony of South Carolina.”<sup>16</sup> Interestingly, the clerk of court that year began the case he wrote into the court journal after the grand jury presentments as “The State of South Carolina vs.” rather than “The Colony vs.”<sup>17</sup>

Besides the presentments the grand juries submitted between 1769 and 1776, the journal includes the well over five hundred cases the court processed in those years. More than half the individuals involved were accused of crimes against people—murder, manslaughter, rape, and, overwhelmingly, assault. The remainder were accused of crimes against property—horse stealing, burglary, and, most frequently, larceny. Crimes such as burglary and murder carried the death penalty—a sentence imposed sixteen times by the court and pardoned nine times by the crown. Other crimes carried lesser penalties. Most individuals were jailed, fined, bonded, whipped, or sent to the pillory. The rest either had their cases dismissed or received pardons. When Thomas Powell, who had been convicted of horse stealing, was brought before the court for sentencing, the court ruled that “No Prosecution being [followed through] against” him, he should be “discharged by Proclamation.”<sup>18</sup> When William Fust and Christopher Davis, who had been found guilty of committing murder, appeared for sentencing and “prayed the benefit of the Clergy,” the court ruled that they were not “entitled” to the benefit. It sentenced them to the gallows, but before their sentences could be carried out, Fust and Davis obtained a royal pardon, entered recognizance bonds for their good behavior, and were discharged on a probation of a year and a day.<sup>19</sup>

Conversely, when John Smith, who was convicted of larceny, came before the court and "prayed the benefit of the Clergy," the court "allowed him" the benefit and ordered him "branded on the brawn of the left Thumb in open Court with the letter T."<sup>20</sup>

As noted earlier, no supporting papers such as coroner's inquisitions, court dockets, and recognizance bonds are available to flesh out the recorded proceedings. Nor is there a comprehensive record of the documents the Court of General Sessions in Charleston made and kept from its inception until the end of the colonial period. The South Carolina Archives holds an affidavit signed by James Wedderburn, who followed Jermyn Wright as clerk of the court in 1733. The affidavit indicates that when Wedderburn took over, he received from Wright thirteen sessions journals and a substantial number of loose documents including "3 Bundles of Grand Jurys Presentments" and "4 Bundles of Recognizances."<sup>21</sup>

Just what happened to the documents received by Wedderburn in 1733 and to other session journals and documents that the colonial court must have generated in the ensuing years is unknown. Some of the loose documents may never have been kept. Many that were, so the story goes, "found their way to the stairwell of the Charleston courthouse, where they were stuffed behind the steps and eventually, about 1848, burned to make room for coal."<sup>22</sup> The journal filmed here was apparently in Charleston in 1865 when northern soldiers occupied the city, for an entry penned on its end page indicates that it was "captured in Charleston, S.C.," and that it was included in a booty of "five volumes three unbound manuscripts and one in paper covers and a Palmetto Flag," which "Aug. P. Pitman" presented to the Essex Institute in Salem, Massachusetts, in 1865. The journal was returned to South Carolina through the courtesy of the Essex Institute in the 1950s.

Despite the absence of court documents, some information on the court during the colonial period can be found in other sources. The published *Journals of the Grand Council* hold proceedings of the court from 1671 to 1680 and for 1692—years when the court operated from within that body.<sup>23</sup> Charleston's colonial newspapers routinely printed reports such as charges

from the chief justice to the grand jury and grand jury presentments. The Charleston Library Society holds a manuscript volume compiled by Chief Justice Nicholas Trott of eight charges he made between 1703 and 1707.<sup>24</sup> And the Archives holds manuscript copies of the acts that supplied the court with the "general lists" of taxpayers who qualified for jury service. These lists have also been published.<sup>25</sup>

#### Endnotes

1. The South Carolina Department of Archives and History holds the manuscripts of the grand jury's presentments of 1758, the coroner's inquisition of 1740, and an imprint autographed by Chief Justice William Henry Drayton in April of 1776 of his charge to the grand jury and the jury's presentments. The Department has photocopies of the warrant of commitment and the recognizance bond; the North Carolina State Archives holds the originals.
2. David Duncan Wallace, *South Carolina: A Short History, 1520-1948* (Columbia: University of South Carolina Press, 1966), 222-28. The Crown had disallowed a circuit court act that the General Assembly passed in 1768. For an account of this episode see Richard Maxwell Brown, *The South Carolina Regulators* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1963), 64-82.
3. Records of the General Assembly, MSS Act for establishing Courts, building Goals, . . . July 29, 1769, South Carolina Archives.
4. South Carolina tried blacks who committed crimes separately in local courts of magistrates and freeholders.
5. Commission to Edmund Bohun, Records in the British Public Record Office relating to South Carolina, 1663-1782, South Carolina Archives Microcopy No. 1, roll 1, vol. 4, 47-50.
6. Thomas Cooper and David J. McCord, eds., *The Statutes at Large of South Carolina*, 10 vols. (Columbia: A. S. Johnston, 1836-41), 3:274, 282.
7. Cooper and McCord, *Statutes*, 2:401-583.
8. The journal records the days on which the chief justices delivered their charges to the grand jury. The texts of the charges, which are not included in the journal, were printed in Charleston's newspapers.
9. Cooper and McCord, *Statutes*, 3:279.
10. *Ibid.*, 3:274-81.
11. *Ibid.*, 3:286.
12. George W. Dalzell, *Benefit of Clergy in America* (Winston-Salem: John F. Blair, 1955), 11, 17, 223-24.
13. MSS Act for establishing Courts, building Goals, . . . July 29, 1769.
14. Journal of the Court of General Sessions, 1769-1776, Records of the South Carolina Court of General Sessions, South Carolina Archives, 108.
15. William Henry Drayton, Charge to the Grand Jury, April 23, 1776, Records of the Court of General Sessions, South Carolina Archives.
16. *Journal of the Court of General Sessions, 1769-1776*, 335.
17. *Ibid.*, 341-42, 344.
18. *Ibid.*, 206.

19. *Ibid.*, 66, 72.  
 20. *Ibid.*, 175.  
 21. Records of the Secretary of State, Miscellaneous Records, Main Series, Vol. DD, 69-70, South Carolina Archives.  
 22. R. Nicholas Olsberg, "Archives News," *The South Carolina Historical Magazine*, 72 (1971):136.  
 23. A. S. Salley, Jr., ed., *Journals of the Grand Council of South Carolina, 1671-1680, 1692*, 2 vols. (Columbia: Historical Commission of South Carolina, 1907).  
 24. Lewis Lynn Hogue edited Trott's charges in a 1972 dissertation prepared for the University of Tennessee.  
 25. Mary B. Warren, *South Carolina Jury Lists, 1718 through 1783; compiled from extant laws* (Danielsville: Heritage Papers, 1977).

### COMPUTER OUTPUT INDEX

The Spindex II software system generated the 16mm computer output microfilm index that accompanies this microfilm publication. The index gives index terms in boldface type in the left-hand column and summarizes the court action beneath (see example below).

**Terms:** Index terms include the names of the presiding judges, attorneys, the accused, the accusers, and jurors. A variety of jury lists appear in the journal. The names of jurors making up the jury pools, of those in attendance each session, and of those who were defaulters are indexed when they appear. The names of those chosen to serve each session are indexed when the jurors are seated but are not indexed again unless the court excused a juror and replaced him during the session. The names of presiding judges are indexed each time they are entered in the journal because a judge who presided one day might not have presided the next. Also indexed are subjects taken up by the grand juries in their presentments, crimes committed, and the disposition of each case. Neither routine business nor the title of the public official conducting it have been indexed. Similarly, the signatures of public officials—the governor and his secretary, for example—on pardons and other documents have been treated as a stamp of office and have not been indexed. The word "Negro" appears throughout the journal and has been interpreted to mean slave rather than free black. The charge "killed in a sudden heat of passion" has been indexed both under the term "murder" and also under the term "manslaughter." The name Rutledge appears throughout the journal. The clerk,

probably to distinguish among individuals with the same name, entered it either as "Mr. Rutledge," "Hugh Rutledge," or "Edward Rutledge." Each instance of "Mr. Rutledge" has been indexed as "John Rutledge."

**Summaries:** The summaries of the action being taken are indented under the relevant index term, and each gives a description of the court action involved or explains in some other way the inclusion of the term. Some of the descriptions include the word "indicted," which has been used broadly to record the actions both of the grand juries when they returned true bills and of the attorney general when he presented cases to the court. When two or more actions on a particular case appear on the same page of the journal but are separated by other business, the summary shows the number of actions as "mentions." For example, if a case called the King vs John Doe for assault had come before the court and Doe's indictment, arraignment, and trial had been recorded on the same page of the journal with other business intervening between each action, then the entry would read: The King vs John Doe for assault, indicted, arraigned, and tried (3 mentions, 1 page). Similarly, if the name of a presiding judge appears more than once on one page, the additional appearances are indicated by the word "mentions." When an action runs from one page to the next, the continuation is noted as "2 pages."

**Dates:** The column headed "DATES" lists the year, the month, and the date of the action described in the summary.

**Entry Numbers:** The last column, headed "ENTRYNBRS," shows five sets of numbers. These are reference numbers, and all but the fourth set are used primarily by the staff of the South Carolina Archives. The fourth set of numbers is for researchers. It shows the page of the journal on which the action takes place.

#### Sample index page:

ARSMR87	DATES	ENTRYNBRS
<b>ARTHUR, WILLIAM</b>	1769/04/21	0152 001 1769 00002 1B
The King vs William Arthur, arraigned for assaulting a public official (1 page)		

In the example, the index term "Arthur, William," appears in boldface; the summary of the action begins "The King vs William Arthur;" and the middle column gives the date of the action as 1769/04/21. This information tells us that William Arthur was brought before the court on April 21, 1769, that he was arraigned for assaulting a public official, and that the information appears only on the one page (1 page). The fourth set of numbers in the "entry nbrs" in third column show that the entry can be found on page 2 (00002) of the journal.

**Cross references:**

Bail Bonds *see* Recognizance Bonds

Deceit *see* Fraud

Free Persons of Color *see* Blacks, Free

Gambling *see* Disorderly House

Inspectors of Flour and Tobacco *see* Inspections, Agricultural

Killed in a sudden heat of passion *see* Manslaughter; Murder

Municipal Watch in Charleston *see* Municipal Guard

Neglecting the Sabbath *see* Blue Laws

Postponement *see* Continuance

Prisoners, Escaped *see* Escape; Jail, Breaking

Prostitution *see* Disorderly House

Roads *see* Commissioners of the Roads; Streets, Roads and Highways

Streets in Charleston *see* Improvements, Municipal

Watchmakers *see* Artisans and Mechanics

Wells in Charleston *see* Water, Supply of

Working Slaves on the Sabbath *see* Blue Laws

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- Microcopy Number 1: Records in the British Public Record Office Relating to South Carolina, 1663-1782; includes index. 12 rolls.  
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- Microcopy Number 2: United States Census. Original Agriculture, Industry, Social Statistics, and Mortality Schedules for South Carolina, 1850-1880. 22 rolls.  
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