

American Legal History – Russell

H[enry] R[ead] McIlwaine (1864-1934), ed, *Minutes of the Council and General Court of Colonial Virginia, 1622-1632, 1670-1676, with Notes and Excerpts from Original Council and General Court Records, into 1683, Now Lost (Richmond : The Colonial Press, Everett Waddy Co., 1924).*

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8 daie of *Aprill A^o Dmi 1629*

A CO^{RT} at *James Citty* the 8th daie of *Aprill A^o Dmi 1629* present

John Pott Esq^r Governo^r &c Cap^t: Smyth.

At this Court was heard a difference depending betweene *Gilbert Whitfeild p^{lt}* against *Rob^{te} Poole* defend^t and it appeared that *Rob^{te} Poole* was indebted unto the said *Gilbert* in the some of 194¹¹ of tobaccoe and nyne barrells of Eares. Whereuppon it was agreed betweene them and the co^{rt} have thought fitt that the said *Rob^{te} Poole* shall give security to the said *Whitfeild* for the paym^t of the said *Tobaccoe* at the next cropp and to paie the Corne at or before the first of *May* next.

A comission was graunted unto *Rob^{te} Poole* to goe a trading for Corne to the *Easterne Shore*.

At the Co^{rt} a Controversie depending between *Musick[?]* *William[?]* and *Richard Bennett[?]* was . . . Concerning a granting of a leafe of Certaine land in *Warrosquoaiche[?]* and for that there was not witnes produced to prove anything on eyther partes the Co^{rt} hath referred the examinacon of the Contest to Cap^t *Baffe[?]* and hath retourned to same to the Governo^r and Councill at the next Quarter Co^{rt} heare holden.

George Vnwise aged thirty yeares or thereabouts sworne and exaied sayth that *Dorcas Howard* his maide being at worke in the grounde on *Monday* the two and twentieth daie of *March* last past, as this exaite taketh it, shee began to complaine that she was not well and being come into the howse shee fell very sick Whereuppon this dep^t demaunded of her what shee ayles who answered *I am very ill in my body*, and wished that her dame were wth her for her dame could give her

ease, then this dep^t demaunded of her if she were wth Childe to wch she answered noe whereuppon this dept threatned to beat her if shee would not tell him the truth why she was so payned and then presently she confessed she was wth Childe and that *Rob^{te} Gage* was the ffather And [then] this exaite bade her goe to bed and asked her [to] call some weomen to her, but shee intreated [that] hee would not And in the morning (the said *Dorcas* being in bed) this exaite demaunded of her how shee did who answered *I have had a mischance*, And then presently hee came to his wife and tould her of it and asked her what hee should doe who bade him goe backe and call some weomen to view the Child. Whereuppon this dep^t sent for one *Moorecocks* wife who came and looked uppon it but whether it were borne alive or deade this dep^t knoweth not, nor more to this matter cann hee depose.

Elizabeth Moorecocke the wife of *Reiginald Moorecocke* of the age of thirty yeares or thereabouts sworne and exaiad sayth that *George Vnwin* came to this exaiats howse and tould her that her [his] maide was broughte a bed and had Carried out the Childr but had not buried it and desired this dep^t to come and view it whereuppon this depon^t went wth him and looked uppon the Childe w^{ch} was a boy, and the mould of the head was bruised, but for anyother thing this dep^t could perceave the Childe might bee borne alyve, and this is all this dep^t can depose in this matter.

This *Re* was continewed till *March Q^rter Co.*

At this Co^{rt} *George Vnwin* planter did acknowledge to owe unto our soveraigne Lord the King 40^l soveraigne *englishe* wth condicon *Dorcas Howard* shall appeare at the Quarter Co^{rt} to Holden at *James Citty*

At this Co^{rt} the Church wardens of the parishe of the lower partes of *Eliz. Citty* did present that *William Capps* and *John Sipse* parishioners there doe not repaire nor frequent the said parishe Church to hear dyvine service according to the lawes and orders of this Colony in such cases provided, *It is therefore ordered* that for soe long tyme as it shall be proved that the said *Capps* and *Sipse* have been absent from the said Church, that they shall pay such fines as by an acte therefor made are provided to be paid: the said fines to be levied at the next Crop by way of distresse.

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Exaicons taken before *John Pott* Esq^r gouerno^r the 25th day of *March A^o* [1629]

ffrancis England of the age of twenty yeares or therabouts sworne and exaied faith That *Thomas Hall* (being exaied by Cap: *Basse* wether hee were man or woeman (as himselfe did confesse to this exaite) toulde this exaite that hee answered Cap^t: *Basse* that hee was both man and woeman And this exaiate further sayth that the said *Hall* being at *Atkins arbor* one *Nicholas* . . . asked him why hee went in woemans aparell the said *Hall* answered in the hearing of this dep^t *I goe in woemans aparell to gett a bitt for my Catt* And he further sayth that there was a Rumor^f and Report that the said *Hall* did ly wth a maid of M^r *Richard Rodes* being at the upper plantacon after it had beene rumored that the said *Hall* was a man and that hee was put in mans apparell the said *Hall* being then there with them, the said *Rodes* tould *Hall* *thou hast beene reported to be^e a woman and now thou art proved to bee a man, I will see what thou carriest*, Whereuppon the said *Rodes* laid hands upon the said *Hall*, and this exaiate did soe likewise, and they threw the said *Hall* on his backe, and then this exaiate felt the said *Hall* and pulled out his members whereby it appeared that hee was a perfect man, and more hee cannot depose.

John Atkins of the age of 29 yeares or thereabouts sworne and exaied deposeth and sayth That M^r *Stacy* having reported that *Hall* now a servante unto this exaiate was as hee thought a man and woeman, not long after, the said *Hall* (being then servante to *Rob^{te} Eyros* and *John Tyos*) and being at *Nicholas Eyros* his howse *Alice Longe Dorothy Rodes* and *Barbara Hall* being at that tyme in the said howse, upon the said Report did search the said *Hall* and found (as they then said) that hee was a man but the said *Tyos* swore the said *Hall* was a woeman (as the said *Dorothy Rodes* did often affirme unto this depo^t Whereuppon Cap: *Basse* exaied the said *Hall* in the presence of this dep^{te} whether hee were man or woeman, the said *Hall* replied hee was both only hee had not the use of the mans parte . . . was a peece of fleshe growing at the . . . belly as bigg as the topp of his little finger [an] inch longe whereuppon Cap^t: *Basse* Commanded [him] to bee put in woemans apparell, but the aforesaid searchers were not fully resolved, but stood in doubte of what they had formerly affirmed, and being (about the twelveth of *february*) at this exaiates howse the said *Hall* dwelling then wth him, and finding the said *Hall* asleepe did againe search him and then allsoe found the said *Hall* to bee a man and at that present[ly] called this exaiate to see the proof therof, but the said *Hall* seeming to starre as if shee had beene awake this exaiate lefte him and at that instant Could see nothing But the *Sunday* following, those serchers being againe assembled and the wife of *Allen Kinaston* and the wife of *Ambrose Griffen* being in Company wth them were againe desirous to search the said *Hall*, and having searched him in the prnce [presence] of this Deponent did then likewise finde him to bee a man Whereuppon this exaiat asked him if that were all hee had to w^{ch} hee

answered *I have a peece of an hole* and thereupon this dep^t commanded him to lye on his backe and shew the same And the said woemen searching him againe did againe find him to bee a man Whereupon the s^d exaiate did Comaunde him to bee put into mans apparell And the day following went to Captaine *Basse*, and tould him that the said *Hall* was founde to bee a man and desired that hee might be punished for his abuse And this dep^t further sayth that the said *Hall* (as this dep^t hath heard) did question the said *Alice Long* for reporting that hee had layen wth a mayd of M^r *Richard Bennetts*, to w^{ch} shee answered *I reported it not, but Penny* [?] *Tyos* his man reported soe much And this is all this exaiate can say.

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Thomas Hall exaied saith that hee being borne at or neere *Newcastle uppon Tyne* was as hee hath beene often tould Christned by the name of *Thomasine* and soe was called and went Clothed in woemans apparell there untill the age ot twelve yeares at w^{ch} age the said Exaiats mother sent him to his Aunte in *London* and there hee lyved ten[?] ye[ares] untill *Cales* Accon, at w^{ch} tyme a brother of his being pressed for that service this exaiate Cut of his heire an Changed his apparell into the fashion of man and went over as a souldier in the *Isle of Ree* bing in the habit of a man, from whence when he was retorned hee came to *Plymouth*, and there hee changed himselfe into woemans apparell and made bone lace and did other worke wth his needle, and shortly after Shipping being ready for a voyage into this Country hee Changed againe his apparell into the habit of a man and soe came over into this Country.

It was thereupon at this Co^{rt} ordered that it shall be published in the plantacon where the said *Hall* lyveth that hee is a man and a woeman, that all the Inhabitants there may take notice thereof and that hee shall goe Clothed in mans apparell, only his head to bee attired in a Coyfe and Croscloth[?] wth an Apron before him And that hee shall finde suerties for his good behavio^r from Quarter Co^{rt} to Quarter Co^{rt} untill the Co^{rt} shall dischargdge him and Cap^t *Nathaniel Basse* is ordered to see this order executed accordingly.

ffor as much as Edward Waller did at this Co^{rt} comence his suit against *John Johnson* about the sale of a sowe and the taking away of a peece, and because *Johnson* testified to this Co^{rt} that hee sent a pigg in parte of satisfacon and the peece by *Richard Dolphenby* to the said *Edward Waller* the w^{ch} the said *Waller* affirmed hee never received And for that the said M^r *Waller* hath dyvers wintesses to examine in this Cause w^{ch} at this Co^{rt} were not present *It is ordered* that the

Captain *Smyth* shall examine the said *Dolphenby* upon his oath Concerning the same, and the Cause is referred to bee determined at the next Quarter Co^{rt}

It is ordered that every comaunder wthin the severall plantacons of this Colony shall take a generall muster of all the inhabitants men woemen and Children as well *Englishe* as Negroes inhabiting wthin the same and Retorne a lift of their names to the Governo^r and Councell at the next Quarter Co^{rt} to bee here holden.

John Virgo being bound by Recognizance to appear this Co^{rt} hath made default whereby hee hath forfe[yted] to the Kings Ma^{tie} 40^{li} *sterling*.

Charles Waller beeing bound by Recognizance to appear at this Co^{rt} hath made defaulte whereby hee hath forfeyted 40^{li} *sterling* to the Kings Ma^{tie}

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June 4, 1640.

Upon the petition of *Hugh Gwyn* gen^t wherein he complained to this board of three of his servants that are run away to *Maryland* to his much loss and prejudice and wherein he hath humbly requested the board that he may have liberty to make [10] the sale or benefit of the said servants in the said *Maryland* which the Court taking into Consideration and weighing the dangerous consequences of such pernicious precedent *do order* that a letter be written unto the said Governour to the intent the said servants may be returned hither to receive such exemplary and condign punishment as the nature of their offence shall justly deserve and then to be returned to their said master

June 30, 1640.

The court hath granted that a commission shall be drawn for *John Mattrom* and *Edward ffleet* authorizing them to levy a party of men, or more if need require, out of the trained band for *Charles river* county with arems and ammunition to go in persuit of certain runaway negroes and to bring them in to the governor. *And it is further ordered* that such men as shall be pressed for this expedition shall receive their pay and satisfaction for their pains at the public charge of the counties from whence such negroes are runaway and likewise for any boat or boats that shall be taken for the said service.

[14] Upon the petition of *Henry Hawley* for keeping a ferry at the mouth of *Hampton* river in *Sequotan* for the ease of inhabitants and passengers in or about

their occasions which the court taking into consideration as a matter tending to the great benefit of the inhabitants and others have granted unto the said *Hawley* a patent for the same during his natural life and the said patent to pass under the hand of the governor and the seal of the colony; the said *Hawley* not exacting above one penny for the ferriage of any of the said inhabitants or passengers according to his offer in his said petition.

Whereas Cap^t *Tho^s Willoughby* Esq^r represented to this court that he had lent one barrel of gunpowder containing one hundred weight to accomodate the funeral of Captain *ffrancis Hook* the late commander of the fort at *Point Comfort* and one of his majestys councillors for *Virginia*, *the court hath therefore ordered* that the said Cap^t *Willoughby* shall be satisfied the same from the present captain of the fort out of the powder belonging to the public.

9th Of July, 1640

Whereas *Hugh Gwyn* hath by order from this Board Brought back from *Maryland* three servants formerly run away from the said *Gwyn*, *the court doth therefore order* that the said three servants shall receive the punishment of whipping and to have thirty stripes apiece one called *Victor*, a *dutchman*, the other a *Scotchman* called *James Gregory*, shall first serve out their times with their master according to their Indentures, and one whole year apiece after the time of their service is Expired. By their said Indentures in recompense of his Loss sustained by their absence and after that service to their said master is Expired to serve the colony for three whole years apiece, and that the third being a negro named *John Punch* shall serve his said master or his assigns for the time of his natural Life here or elsewhere.

[11] July 22, 1640.

Whereas complaint has been made to this Board by Cap^t *W^m Pierce* Esq^r that six of his servants and a negro of M^r *Reginolds* has plotted to run away unto the *Dutch* plantation from their said masters and did assay to put the same in Execution upon *Saturday* night being the 18th day *July* 1640 as appeared to the Board by the Examinations of *Andres Noxe*, *Rich^d Hill*, *Rich^d Cookeson* and *John Williams* and likewise by the consession of *Christopher Miller*, *Peter Wilcocke*, and *Emanuel* the foresaid Negro who had at the fore said time, taken the skiff of the said Cap^t *W^m Pierce* their master, and corn poweder and shot and guns, to accomplish their said purposes, which said persons sailed down in the said skiff to *Elizabeth* river where they were taken and brought back again, the Court taking the same into

consideration, as a dangerous precedent for the future time (if unpunished) did order that *Christopher Miller* a *dutchman* (a prince agent in the business) should receive the punishment of whipping and to have thirty stripes, and to be burnt in the cheek with the letter R and to work with a shakle on his legg for one whole year, and longer if said master shall see cause and after his full time of service is Expired with his said master to serve the colony for seven whole years, and the said *Peter Wilcocke* to receive thirty stripes and to be Burnt in the cheek with the letter R and, after his term of service is Expired with his said [12] master to serve the colony for three years and the said *Rich^d Cookson* after his full time expired with his master to serve the colony for two years and a half, and the said *Rich^d Hill* to remain upon his good behaviour until the next offence and the said *Andrew Noxe* to receive thirty stripes, and the said *John Williams* a *dutchman* and a Chirurgeon after his full time of service is Expired with his master to serve the colony for seven years, and *Emanuel* the Negro to receive thirty stripes and to be burnt in the cheek with the letter R. and to work in shakle one year or more as his master shall see cause, and all those who are condemned to serve the colony after their times are expired with their masters, then their said masters are required hereby to present to this board their said servants so condemned to the colony

7th Of Oct., 1640.

Whereas Tho^s Pursell servant unto *Rob^t Brassure* for the term of four years hath petitioned to the board for his freedom, it being denied unto him by the *s^d Brassure* in regard the said *Pursell* has absented himself from his said service for the space of three months or there-about *the Court hath therefore ordered* that the said *Pursell* shall be discharged from his said master but shall losse his right in apparel and corn due unto him at the Expiration of his time in respect of his absence from his service as aforesaid & that the said *Brassure* shall Deliver [9] unto the said *Purcell* such apparel bedding and what other goods do already belong unto him and are remaining in the custody of the said *Brassure*

13th of Oct., 1640.

The Court hath ordered that *W^m Wootton* and *John Bradye* as principall actors and contrivers in a most dangerous conspiracy by attempting to run out of the country and Inticing divers others to be actors in the said conspiracy to be whip^t from the gallows to the Court door and that the said *Bradye* shall be Branded with an Iron in the shoulder, and *Wotton* in the forehead each of them to serve the Colony seven

years, the service due from the [13] said *Wotton* to the said *M^r Sanderson* being first performed, each of them to work in Irons during the time of the said censure for the rest of these that are freemen (*viz*) *John Tomkinson* and *Ric^r West* for consenting and concealing the said plott that they shall be whipt and serve the colony two years and those that are servants (*viz*) *John Winchester*, *W^m Drummer* *Rob^t Rouse* and *Rob^t Mosely* to be whipt only as also *Margarett Beard*, and that the masters of the said servants shall pay the fees due from the servants to the sheriffs and the servants shall make good the same, at the Expiration of their time by a years service apiece to their said masters and that none of them shall be released from their Irons without order from this Board.

Oct. 17, 1640.

Wheras we are daily given to understand of divers servants that run away from their masters whereby much loss and prejudice doth ensue to the masters of such servants, the court therefore conceiving it to be the most necessary and speedy course to apprehend the said servants *doth order* that upon complaint thereof made unto the sheriffs of the counties where any such servant or servants doth run away that the sheriff thereof or his deputies shall hereby have power to hire boat and hands to persue the said runaways and that the charge thereof shall be borne and defrayed by the said county.

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