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Judicial Impeachments and the Struggle for Democracy in South Carolina

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"That no office whatever be held during life or good behavior:" Judicial Impeachments and the Struggle for Democracy in South Carolina

*James W. Ely, Jr.**

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I. INTRODUCTION

Judicial tenure had become a sensitive issue in the colonies before the American Revolution. Although the Act of Settlement of 1701 guaranteed tenure during good behavior for judges in England,[1] this statute did not extend to the colonies, and royal governors regularly were instructed to issue judicial commissions at the pleasure of the Crown. Judges in New York briefly secured appointments for good behavior during the 1750's, but in 1761 the King in Council directed that henceforth no commission could be granted except at pleasure.[2] In 1759 the Pennsylvania Assembly passed a

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1. 6 W. HOLDSWORTH, A HISTORY OF ENGLISH LAW 234 (1924).

2. Klein, *Prelude to Revolution in New York: Jury Trials and Judicial Tenure*, 17 WM. & MARY Q. ser. 3, at 439 (1960).

measure providing that judges in that colony would enjoy the same secure tenure as English judges. This law, however, was disallowed by the Crown.[3] Similarly, the South Carolina Circuit Court Act of 1768 was vetoed in part because it provided for permanent judicial tenure.[4] This royal opposition to appointments for good behavior, coupled with the expansion of prerogative courts,[5] convinced many colonists that England was engaged in a deliberate conspiracy to undermine the independence of the judiciary. Decrying "the servile tenure of *during pleasure,*" a Pennsylvania pamphleteer warned his fellow citizens that "if an impartial and independent administration of justice is once wrested from your hands, neither the money in your pockets, nor the clothes on your backs, nor your inheritances, nor even your persons can remain long safe from violation."[6] Reflecting this attitude, the Declaration of Independence stated that the King "made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries."[7]

Although the Revolutionary generation extensively debated questions of government and sovereignty, it left unresolved the role of the judiciary in a republican society. The principal concern of the colonial period had been to protect judicial independence from the Crown. "With independence the problem was reversed," Richard E. Ellis observed, "for the establishment of republican governments with the people as the ultimate source of authority raised the radically new question of the extent to which the judiciary should be dependent upon and responsive to popular influence."[8] In view of the democratic implications of the Revolution, could judges legitimately claim freedom from the popular will? During the Revolutionary years several states adopted constitutions under which judges were elected for a specified term of office.[9]

3. Selsam, *A History of Judicial Tenure in Pennsylvania,* 38 DICK. L. REV. 168, 171 (1934).

4. R. BROWN, THE SOUTH CAROLINA REGULATORS 65-66, 78-80 (1963).

5. *See* C. UBBELOHDE, THE VICE-ADMIRALTY COURT AND THE AMERICAN REVOLUTION 18-22, 206-11 (1960).

6. *A Letter to the People of Pennsylvania,* in 1 PAMPHLETS OF THE AMERICAN REVOLUTIGN 249, 260, 272 (B. BAILYN ED. 1965).

7. 1 THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS AND ORGANIC LAWS 5 (F. Thorpe ed. 1909).

8. R. ELLIS, THE JEFFERSGNIAN CRISIS: COURTS AND POLITICS IN THE YOUNG REPUBLIC 7 (1971).

9. Connecticut, New Jersey, Pennsylvania, Rhode Island, and Vermont established an elective judiciary. G. WOOD, THE CREATIGN OF THE AMERICAN REPUBLIC, 1776-1787, at 160-61, 294-95 (1969).

South Carolina, on the other hand, was among those jurisdictions adhering to life tenure for good behavior, a step that highlighted the crucial problem of judicial removal. Under the Constitutions of 1776, 1778, and 1790, judges in Carolina were chosen by joint ballot of the legislature and were commissioned "during good behavior."[10] The earlier charters authorized judicial removal by address, but this provision was dropped in the 1790 Constitution. Aside from the governor, judges, and other statewide officers, the Constitution permitted the term and manner of electing officials to be determined by legislation.[11] All civil officers were "liable to impeachment for any misdemeanor in office," but judgment did "not extend further than to a removal from office, and disqualification to hold any office of honour, trust, or profit" under the state.[12] Both impeachment and conviction required a two-thirds vote. A convicted party was also subject to indictment and trial. Impeachments were assigned to the legislature, which met annually in late November for a session usually lasting about thirty days.

Grand jurors in South Carolina came to play an important role in the expression of public opinion toward the judicial system. During the colonial and post-Revolutionary periods the grand jury functioned as a vital legal institution. In addition to the power of returning or refusing criminal indictments, the grand jury acted as a kind of local government, proposing new laws, protesting abuses, and performing administrative tasks. Grand jurors early turned their attention to community problems and voiced popular sentiments through their presentments.[13] Such presentments were forwarded to the legislature and published in newspapers. In his 1791-92 lectures James Wilson, Associate Justice of the United States Supreme Court, observed:

> The grand jury are a great channel of communication, between those who make and administer the laws, and those for whom the laws are made and administered. All the operations of government, and of its ministers and officers, are within the compass of their view and research. They may suggest public improvements and the modes of removing public inconveniences: they

10. S.C. CONST. of 1790, art. III, § 1; S.C. CONST. of 1778, art. XXVII; S.C. CONST. of 1776, art. XX. For the early constitutions of South Carolina, see 1 T. COOPER & D. MCCORD, THE STATUTES AT LARGE OF SOUTH CAROLINA (Columbia, S.C. 1836) [hereinafter cited as COOPER, STATUTES].

11. S.C. CONST. of 1790, art. VI, §§ 1, 2. Under the constitution sheriffs served a four-year term and were ineligible for reelection.

12. S.C. CONST. of 1790, art. V, § 3.

13. *See* Hale v. Henkel, 201 U.S. 43 (1906); L. CLARK, THE GRAND JURY: THE USE AND ABUSE OF POLITICAL POWER 13-20 (1975); R. YOUNGER, THE PEOPLE'S PANEL: THE GRAND JURY IN THE UNITED STATES, 1634-1941, at 1-55 *passim* (1963).

> may expose to public inspection, or to public punishment, public bad men, and public bad measures.[14]

The prestige of the grand jury was enhanced greatly in the course of the Revolutionary struggles. Grand jurors blocked criminal proceedings begun by royal officials, and jury charges and presentments afforded a vehicle for patriotic propaganda. For example, in April of 1776 Judge William Henry Drayton of South Carolina addressed the Charleston grand jury at length on the justification for the Revolution. In response, the grand jurors denounced "a corrupt nefarious administration in Great Britain" before turning their attention to such mundane matters as roads, ferries, and forestalling.[15] Because the legislature selected local officials, the grand juries were the one arm of local government reflecting popular voices. Hence, a study of grand jury presentments provides a particularly useful reading of public attitudes in post-Revolutionary South Carolina.[16]

Since scholars generally have neglected the legal history of South Carolina,[17] the Palmetto State's rich tradition of impeachments during the early national era has never been explored in depth.[18] The purpose of this article is to analyze the wave of impeachments and attempted impeachments that erupted in Carolina during the period 1810-1814. These developments present a useful vehicle for examining the function and public image of the Carolina judiciary in the early Republic. What alleged abuses triggered this outburst of impeachments? To what extent were political or sectional motives a consideration? Was resentment against tenure for "good behavior" responsible?

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14. 2 THE WORKS OF JAMES WILSON 214 (J. Andrews ed. 1896).

15. H. NILES, PRINCIPLES AND ACTS OF THE REVOLUTION IN AMERICA 72, 79 (New York 1822).

16. Pursuant to a 1791 statute the circuit judge presiding in a district was directed to prepare a new jury list every three years. He selected "those best qualified to serve as grand jurors" from the roll of taxpayers and placed their names in the grand jury box. When the court session began, the judge drew the names of the grand jurors to be summoned for the next succeeding court. 7 COOPER, STATUTES, *supra* note 10, at 271-74. If a judge were unable to attend court, the sheriff and clerk were authorized to draw the necessary juries for the next sitting. 5 COOPER, STATUTES, *supra* note 10, at 380. For a description of the actual process of selecting grand and trial juries, see Journals, Spartanburg District Court of General Sessions, Nov. 1806, South Carolina Dep't of Archives & Hist. [hereinafter cited as State Archives].

17. *But see* Ely, *American Independence and the Law: A Study of Post-Revolutionary South Carolina Legislation,* 26 VAND. L. REV. 939 (1973); M. Hindus, Prison and Plantation: Criminal Justice in 19th Century Massachusetts and South Carolina (1975) (Ph.D. dissertation, Univ. of Cal., Berkeley); D. Senese, Legal Thought in South Carolina, 1800-1860 (1970) (Ph.D. dissertation, Univ. of S.C.).

18. For brief treatments of early Carolina impeachments, see 2 D. WALLACE, HISTORY OF SOUTH CAROLINA 456-57 (1934); J. WILLIAMS, VOGUES IN VILLAINY: CRIME AND RETRIBUTION IN ANTE-BELLUM SOUTH CAROLINA 77-78 (1959).

Prior to the period under examination here, South Carolina had experienced several impeachments of executive officers. Dishonest administration of public money prompted the impeachment and conviction of Attorney General Alexander Moultrie (1792-93)[19] and Daniel D'Oyley, Treasurer of the Lower Division, (1806-07).[20] A similar offense caused the impeachment and resignation of William Davis, Collector of Taxes, (1791-93).[21] In May of 1794 a House Committee recommended the impeachment of Chancellor Richard Huston for having "totally abandoned himself to the vice of habitual and excessive drinking."[22] Huston promptly resigned.

II. The Impeachment Cases

A. *William Hasell Gibbes*

The impeachment proceedings againt William Hasell Gibbes, master in equity for Charleston, were initiated by a private petition to the House of Representatives in 1809. Filed by Thomas Lehre of Charleston, the petition in essence charged Gibbes with being privy to a collusive lawsuit designed to breach a marriage settlement and in this process acting contrary to South Carolina statutes governing the Equity Court. Similar complaints were alleged against two judges of the Equity Court who confirmed Gibbes's order for the sale of property. Lehre, a local political figure, was named sheriff of Charleston in 1798. He also served several terms in the South Carolina House of Representatives before accepting an 1813 appointment as commissioner of loans for the United States in South Carolina.[23]

Born in Charleston in 1754, Gibbes had advanced rapidly to a position of prestige in post-Revolutionary South Carolina. Educated at the Inner Temple, he returned to South Carolina in 1778 and participated in the military struggle for independence. Gibbes was chosen as the first recorder for Charleston, and in 1784 the legisla-

19. *See* S.C. House J., Dec. 18, 20, 1792; S.C. House Comm. Preparing Articles of Impeachment, Report, Dec. 19, 1792; S.C. General Assembly Reports, State Archives, *supra* note 16; S.C. House Committee Appointed to Conduct the Impeachment of Alexander Moultrie, Papers, 1792-1793, State Archives; S.C. Senate 20, 1806; S.C. Senate 1793.

20. S.C. House J., Dec. 13, 18, & 20, 1806; S.C. Senate J., Dec. 1, 2, & 17, 1807.

21. S.C. House J., Dec. 19, 1791; S.C. Senate J., Dec. 10, 1793.

22. S.C. House Comm. on Richard Hutson, Report, May 6, 1794, State Archives, *supra* note 16; S.C. House J., May 6 & 10, 1794.

23. S.C. House J., Dec. 21, 1798; Misc. Rec., vol. OOO, at 240, vol. KKK, at 440-41, State Archives, *supra* note 16; 1 Biographical Directory of the South Carolina House of Representatives 243-86 (W. Edgar ed. 1974) [hereinafter cited as Edgar, Biographical Directory].

ture elected him to the post of master in equity.[24] He was commissioned during good behavior pursuant to the Constitution of 1778. As master, Gibbes handled trust funds, guardianships, and the public sale of property under court order, and he ascertained the amounts payable in accordance with court decrees. The position combined both judicial and administrative functions, with the Court of Equity ruling in 1808:

> In his ministerial character, he is bound strictly to follow the instructions of the Court. If he does more than he is advised to do, with a view to benefit the parties, he ought not to be censured for it. He is frequently a judicial officer. . . . In this capacity, he is a judge, and exercises his mind in forming decisions, concerning the rights and interests of others. . . . Although the Master in most instances acts as a judge, yet it is always with an appeal to the Court.[25]

Gibbes was the source of controversy long before the vote of impeachment. On several occasions he was involved in lawsuits for alleged misfeasance in his official capacity. For example, in 1810 he was sued unsuccessfully for an error in taking security on a sale of property.[26] One petitioner complained to the legislature that Gibbes defrauded him in a judicial sale of land, but the lawmakers apparently took no action.[27] Moreover, as a creditor Gibbes was party to a great deal of private litigation.[28] In 1800 Governor John Drayton sought to remove Gibbes from office. Reasoning that a 1799 modification of the equity districts abolished the existing position of master, Drayton appointed another individual as master in equity for Charleston District.[29] The Court of Equity declared the new appointment void and upheld Gibbes's right to his office:

> That Mr. Gibbes having been legally appointed, (and constitutionally,) he has a freehold in the office, holding it during good behavior; and cannot be displaced by any other mode but that pointed out by the Constitution, which is by impeachment.[30]

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24. JOURNALS OF THE PRIVY COUNCIL, 1783-1789, at 35 (A. Edwards ed. 1971); 2 J. O'NEALL, BIOGRAPHICAL SKETCHES OF THE BENCH AND BAR OF SOUTH CAROLINA 213-14 (1859) [hereinafter cited as O'NEALL, BIOGRAPHICAL SKETCHES].

25. Fenwicke v. Gibbes, 1 S.C. Ch.(2 Des.) 627, 634 (1808).

26. Thompson v. Wagner, 2 S.C. Ch. (3 Des.) 93 (1810).

27. Petition of Reuben Levy, General Assembly Petitions (1790's), State Archives, *supra* note 16.

28. *E.g.*, Gibbes v. Wainwright, 1 S.C.L. (1 Bay) 483 (1795); Gibbes v. Mitchell, 1 S.C.L. (2 Bay) 120 (1798); Gibbes v. Mitchell, 1 S.C.L. (2 Bay) 351 (1802).

29. Drayton sought the advice of the Attorney General before treating the office as vacant. J. Drayton, Journal of the Executive of South Carolina, 4 & Message No. 3 (1800) (microfilm), State Archives, *supra* note 16.

30. Case of Gibbes, 1 S.C. Ch. (1 Des.) 587 (1800).

A decade later the critics of Gibbes were prepared to take this step.

The allegations against Gibbes concerned his sale of certain trust assets, a transaction that caused a Charleston cause célèbre.[31] Under the will of one John Seymour, admitted to probate in 1775, legacies were payable to several individuals in Scotland. The executor of the estate, Rev. Alexander Findley, sold designated parcels of land to satisfy the legacies, but the outbreak of the Revolution prevented the actual payment of the amounts due. The executor did not feel authorized to remit the funds abroad, and the value of the money in his hands depreciated rapidly under wartime economic conditions. When Findley died in 1784, his will named the testator's only child, his daughter Ann, as the residual legatee. After a brief first marriage, Ann married Dr. William Lehre in 1795. On the eve of her second marriage Ann and William Lehre executed a deed of marriage settlement, covering property received from her father and first husband, which created a trust in favor of Ann and her issue.[32] Among the trustees of this arrangement was Thomas Lehre, William's brother. In the course of the second marriage Ann gave birth to a daughter, Mary. When William died late in 1799, Ann qualified as his executor and Thomas was named testamentary guardian for Mary.[33]

While this tangled family picture was emerging, the unpaid legatees of John Seymour instituted a suit in April 1793 against the estate of Alexander Findley. When the defendant estate answered the complaint in February 1794, the Equity Court referred the matter to Gibbes as a master for a report. No report was issued, however, until early 1801, when Gibbes sustained the claims of the legatees. On the same day the report was confirmed by Judges Hugh Rutledge and William Marshall of the Equity Court. Although no order issued for a judicial sale, in March of 1802 Gibbes sold thirty-five slaves and nine tracts of land secured by the marriage settlement in order to pay the outstanding legacies. Charles Lining, ordinary for Charleston District and attorney for Ann Lehre, was apparently the only bidder at the sale and purchased the entire trust estate for what Thomas considered an insufficient price. On April

31. This account of the Lehre episode is based upon Committee on the Memorial of Thomas Lehre, Report, General Assembly Committee Reports, Dec. 15, 1809, and Memorial from Thomas Lehre, General Assembly Petitions (Nov. 27, 1810), State Archives, *supra* note 16.

32. 2 Marriage Settlements 1792-1796, at 503-05 (Dec. 24, 1795), State Archives, *supra* note 16.

33. 27 Record of Wills, Book C 1793-1800, Charleston, 914-16, State Archives, *supra* note 16.

28, 1802, Judge Rutledge confirmed the sale on motion by Lining.[34]

Incensed by these developments, Thomas Lehre saw the situation in conspiratorial terms. He later asserted that "the said proceedings were carried on under the color of the above suit, for the purpose of destroying the said trust estate, by a pretended sale thereof." Lehre maintained that prior to the judicial sale Ann had agreed to cover any deficiency owed the Seymour claimants, and, consequently, the sale by Gibbes was "illusory."[35] Expressing concern that he, as trustee and guardian of Mary Lehre, might be compelled to account and to make good any diversion of trust assets, Lehre filed a bill in equity against Ann in October 1803 seeking to upset the actions of the master.

Lehre advanced several specific complaints about the conduct of Gibbes, which require consideration because they figure in the subsequent impeachment:

1. That a 1789 statute authorized the continuation of a suit in equity for no longer than three years, absent "special reasons to be assigned."[36] Since more than seven years had elapsed between the filing of the answer and Gibbes's decision, Lehre reasoned that "the said suit then was legally out of court."

2. That a 1791 statute obligated "the commissioners in their respective districts, to make all sales under the decree of the said court."[37] Because no decree for a judicial sale had been rendered by the Equity Court, Lehre contended that Gibbes "did knowingly and willfully" violate the law and his duty as master.

3. That Gibbes proceeded to judgment without joining the infant, Mary Lehre, or her trustee as parties.

4. That Gibbes acted "upon an agreement he had previously entered into with the said Ann Lehre, or some of her agents." These complaints culminated in the general allegations that Gibbes had violated both his duties as master and Article 9, Section 2, of the South Carolina Constitution, which protected a citizen against deprivation of property.[38]

34. Memorial from Thomas Lehre, General Assembly Petitions (Nov. 27, 1810), State Archives, *supra* note 16.

35. *Id.*

36. 7 COOPER, STATUTES, *supra* note 10, at 208, 250.

37. *Id.* at 258.

38. Memorial from Thomas Lehre, General Assembly Petitions (Nov. 27, 1810), State Archives, *supra* note 16.

Meaningful comment on the various charges against Gibbes is impossible without the complete records of the Equity Court. Given that the Seymour legatees were foreigners, and considering the unsettled conditions in post-Revolutionary America, Gibbes may have felt that special circumstances warranted his continuing with the long-stalled lawsuit. Moreover, the Seymour claimants had priority over Ann Lehre in the assets of her father, and no marriage settlement that she later created could defeat their legacies. Hence, Gibbes may have reasoned that notice to the infant Mary and her trustee was unnecessary. None of this, however, explains why Gibbes waited so long to render a decision, or why counsel did not object to the inordinate delay. More bothersome is the 1802 sale of trust property without a court decree. Superficially the decree would seem to follow almost automatically from the master's report, confirmed by the court, upholding the legatees. Yet, as Thomas Lehre asserted, Ann could have held other assets of the Findley estate that might have been used to discharge the legacies and to preserve the marriage trust. Thus the unauthorized 1802 sales may have involved more than technical irregnlarity. Although possibly a product of his imagination or spite, Lehre's charge that Gibbes was party to a collusive and fraudulent sale constituted a serious matter deserving a careful investigation. For some reason Gibbes and Lining were clearly defensive about the sale because they sought to have it confirmed on several occasions.

Whatever the merits of the allegations against Gibbes, Lehre's 1803 suit did not fare well. Chancellors Rutledge and William Dobbins James, "who had legalized by a new kind of judicial legislation, the Master's said proceedings," rejected all of Lehre's contentions in an 1805 order.[39] This was not the worst of it, however, since the judges decreed that the 1795 marriage settlement "be set aside as being surreptitiously and fraudulently obtained and that the complainant Thomas Lehre do pay the costs of this suit."[40] Lehre later complained about "the unfounded insinuations thrown out, and the intemperate expressions which the said Court, from the seat of Justice, and without any foundation in reason, have lavished" upon him. He noted that the judges "have, with extreme uncharitableness, imputed to [him] improper motives."[41]

39. *Id.*

40. Equity Court Minute Book 66 (1804-1810), State Archives, *supra* note 16.

41. Memorial from Thomas Lehre, General Assembly Petitions (Nov. 27, 1810), State Archives, *supra* note 16.

Lehre was further aggrieved in May of 1807 when, on motion by Gibbes and with the consent of Lining, Chancellors Rutledge and James signed a decree directing a judicial sale in the Seymour matter, which order was entered *nunc pro tunc.* Lehre observed "that the same was evidently done to cloak the said illegal and unjust proceedings so complained of by your memoralist."[42]

By this point the Lehre controversy must have been producing some bitter divisions in Charleston, and it gave rise to a major libel action. Stung by the attack on his motives by the Court of Equity, Lehre published a pamphlet in which he sought to vindicate himself. In the pamphlet he commented negatively on the conduct of Lining. Indicted for criminal libel, Lehre was brought to trial at the January 1808 Court of General Sessions in Charleston before Judge John F. Grimké. Defense counsel sought to introduce Equity Court records in order to explain the object of the publication. Grimké ruled that the evidence was inadmissible, but with the prosecutor's consent the material was presented to the jury. Judge Grimké also rejected a defense contention that a report of a judicial proceeding could not be punished as libelous. The jury found Lehre guilty and he was sentenced to pay a fine of 500 dollars.[43]

Lehre's appeal was heard before the Constitutional Court in January 1810 and was reargued the following year. Although a member of the Court, Grimké did not participate in the hearing, which was conducted over a period of three days. Defense counsel primarily asserted that truth should be given in evidence in a criminal prosecution as well as in a civil action for libel, while the Attorney General appeared in support of the conviction.[44] In an 1811 opinion by Judge Thomas Waites the Court unanimously upheld Grimké's rulings and the jury verdict.[45]

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42. *Id.*

43. For an account of Lehre's trial, see Journals [of the] Constitutional Court 10-12 (1811-1816).

44. *Id.* The Constitutional Court of Appeals consisted of all the common law judges sitting en banc to hear appeals from the circuit courts. Thus the same judges sat on courts of original and appellate jurisdiction. Senese, *Building the Pyramid: The Growth and Development of the State Court System in Antebellum South Carolina, 1800-1860,* 24 S.C.L. REV. 357, 359-60 (1972).

45. The *Lehre* decision illustrates the uncertain nature of court reporting in early South Carolina. At the request of the members of the Charleston bar, the full text of the opinion was carried in the Charleston Courier on January 30, 1811. The complete text was not generally available until Volume 2 of W.R.H. Treadway's *Reports of the Judicial Decisions in the Constitutional Court of the State of South Carolina* was printed in 1823. In an editor's note Treadway observed, "The importance of this decision has induced the publisher to add it to these Reports, not having been published in a manner calculated to preserve it." *Id.* at 809.

Thomas Lehre must have been seething with resentment at Gibbes, Rutledge, James, and Grimké when he first petitioned the legislature in late 1809. His memorial struck a responsive chord. On December 15, 1809, a House committee concluded that Gibbes had "acted illegally in making the said sale" and had "knowingly and willfully violated the duties of his office."[46] The report recommended that Gibbes be impeached. Similarly, the committee called for the impeachment of Rutledge and James on grounds that they had confirmed an improper sale. The report "highly" disapproved of Lining's conduct, but merely urged that a statute be enacted to prevent an ordinary from practicing law. Lastly, the committee expressed the view that no decree should have been entered against the Findley estate, thus commenting on the merits of the lawsuit. On December 16 a motion that the committee report be printed was defeated by a vote of 19 to 80.[47] Whether this move had the effect of killing the report is unclear, but no further legislative action was taken on the Gibbes matter at the 1809 session.

The following year Lehre attained a large measure of success in his campaign against Gibbes. Lehre's ability to secure favorable results was enhanced significantly by his reelection to the House of Representatives in the October 1810 canvass.[48] In November of that year he resubmitted a lengthy memorial reviewing his complaints.[49] On November 28 the House directed that Gibbes, Rutledge, James, and Lining "be heard in their defense to the charges exhibited against them in the memorial of Thomas Lehre, and that they have leave to offer evidence in their defense, provided such evidence be adduced."[50] Whether or not any of the individuals took advantage of this opportunity, the investigation committee submitted a recommendation largely parallel to the 1809 report, but exonerating Chancellor James.[51] Stressing the apparent violations of the statutes of

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A much abbreviated version of *State v. Lehre* (1811) was published in 3 S.C.L. (2 Brev.) 446, which appeared in 1839.

46. Committee on the Memorial of Thomas Lehre, Report, General Assembly Committee Reports, Dec. 15, 1809, State Archives, *supra* note 16.

47. S.C. HOUSE J., Dec. 16, 1809.

48. Lehre was elected as part of the Republican ticket that swept all of Charleston's legislative seats; however, he received the fewest votes of any Republican candidate. Charleston City Gazette and Commercial Daily Advertiser, Oct. 6, 12, 1810.

49. Memorial from Thomas Lehre, General Assembly Committee Reports (Nov. 27, 1810), State Archives, *supra* note 16; Charleston Courier, Dec. 3, 1810.

50. S.C. HOUSE J., Nov. 28, 1810.

51. While the House was considering the Lehre memorial, Gibbes petitioned both houses for a leave of absence from the state for a period of four months on account of "bad health." An accompanying certificate from his doctor explained that "a temporary residence"

1789 and 1791, the committee asserted that Gibbes had "knowingly and willfully violated the duties of his office" and called for his impeachment.[52] After a debate in the committee of the whole, the House adopted the report on December 14.

The impeachment resolution was carried by a vote of 79 to 35.[53] The margin against Gibbes was so decisive that, unlike the Grimké balloting to be considered below, a clear sectional pattern failed to emerge. Nonetheless, most of Gibbes's support was centered in the low-country districts. He was backed by the Charleston delegation 10 to 5, with Lehre not voting. Interestingly, Speaker John Geddes of Charleston favored the committee report. The representatives from Colleton, Berkeley, Santee, Orange, and Christ Church lined up behind Gibbes, but he received only scattered support elsewhere.[54]

On December 15 the House resumed consideration of the balance of the committee report. The call for an impeachment of Rutledge was defeated by a ballot of 69 to 39, falling just short of the necessary two-thirds vote.[55] The six representatives who voted on the Gibbes resolution, but not on Rutledge, easily could have made the difference. Since James became an equity judge in December 1802, after the sale in question had been completed and confirmed, the committee deemed his participation in the subsequent proceedings as affording no ground for impeachment. This carried easily, 89 to 21. Finally, the committee accused Lining of making statements that "mislead the said Court contrary to his duty as a Solicitor thereof" and urged that the Attorney General take steps to investigate Lining and cause him to be removed from the rolls of the Equity Court. A motion to strike all reference to Lining was adopted by a voice vote, leaving Gibbes alone to face trial in the Senate.[56]

On December 18 the House appointed a four-man committee to prepare articles of impeachment and to manage the prosecution

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in a northern climate was necessary "for the restoration of his health." Petition of William Hasell Gibbes, General Assembly Petitions (Nov. 22, 1810); S.C. HOUSE J., Nov. 28, 1810, State Archives, *supra* note 16. A Senate committee recommended that the petition be granted, but apparently no further action was taken. Committee on the Petition of W.H. Gibbes, Report, S.C. General Assembly Committee Reports, Dec. 4, 1810, State Archives, *supra* note 16.

52. For the committee report, see S.C. HOUSE J., Dec. 14, 1810; Charleston Courier, Dec. 22, 1810.

53. S.C. HOUSE J., Dec. 14, 1810; Charleston Courier, Dec. 22, 1810.

54. Charleston Courier, Dec. 22, 1810.

55. S.C. HOUSE J., Dec. 15, 1810; Charleston Courier, Dec. 22, 1810.

56. Charleston Courier, Dec. 22, 1810.

of Gibbes.[57] The following day the managers presented articles that declared in part:

> Whereas it is incumbent on those citizens who exercise offices of profit and trust under and by virtue of the Constitution and laws of the State to fulfill the duties and discharge the trust reposed in them with fidelity and integrity.
>
> And whereas the said William Hasell Gibbes, Master of the Court of Equity in Charleston as aforesaid lawfully appointed sworn and acting as such and being in the exercise of his official duties did wilfully and knowingly violate the duties of his office and offend in the manner and form charged against him in the following articles. . . .[58]

Three somewhat repetitious articles were exhibited against Gibbes:

1. That he sold slaves and land of the Findley estate knowing that no court decree authorized the sale.
2. That at the time of the sale no suit lawfully was pending before Gibbes by virtue of the 1789 statute and that no decree of sale had been entered pursuant to the 1791 act.
3. That Gibbes knowingly conducted a judicial sale without authority "at the instance of certain persons" and upon a promise to secure a confirmation of the sale.[59]

The House promptly notified the Senate of the impeachment against Gibbes and requested leave for the managers to attend the Senate for that purpose. On December 20, the last day of the session, Manager Charles Pinckney read the articles before the Senate. The House message and the articles were referred to a committee, which studied impeachment precedents. Reporting later that day, the committee recommended that the Senate set the trial for early the next December. Further, the committee called for Gibbes to be taken into custody unless he gave personal security in the amount of 5000 dollars and two other securities of 2500 dollars each for his appearance to answer charges against him. Lastly, the committee urged that the President of the Senate, on application of either the defendant or the managers, issue subpoenas *ad testificandum* and *duces tecum*. The Senate adopted the committee's recommendations and adjourned until 1811.[60]

When the Senate convened in late November 1811 a three-man

57. Charles Pinckney of Charleston, Joseph Grist of Union District, Joseph Alston of Prince George District, and John J. Chappell of Richland District were appointed to manage the prosecution. S.C. HOUSE J., Dec. 18, 1810. When the trial opened, the House substituted George Bowie of Abbeville District for Alston, who was ill. S.C. SENATE J., Dec. 2, 1811.

58. S.C. HOUSE J., Dec. 19, 1810.

59. *Id.*

60. S.C. SENATE J., Dec. 20, 1810; Charleston Courier, Dec. 27, 1810.

committee was appointed "to report the arrangements necessary to be made, and the rules and forms necessary to be observed by this House" for the Gibbes trial.[61] After an examination of both Carolina and federal precedents, the committee recommended a set of rules to govern the impending trial and to serve "as standing Rules of the Senate in all future cases of Impeachment." The Senate adopted this report,[62] the substance of which will be treated later.

On December 2 the Senate resolved itself into a Court, and the President administered to the members the special oath to "do impartial justice according to the Constitution and laws of this State, and of the United States."[63] In response to a message, Gibbes appeared with his counsel, William Drayton and Keating L. Simons.[64] The defendant declared that he was ready for trial, but the managers successfully sought an adjournment to the following day. The matter proceeded slowly at the next Court meeting as well. Counsel for Gibbes submitted his answer, "comprising a printed pamphlet of forty-three pages," to the articles.[65] The managers requested a copy of the answer and "sufficient time to reply to the same." Defense counsel protested "any unnecessary delay" in the trial, and the Court adjourned.[66] Meeting on December 4, the Court set December 6 as the date for the trial to begin.

At the appointed time the managers submitted a replication to Gibbes's answer, and then Charles Pinckney opened the case for the prosecution with a statement of facts.[67] Over the course of two days the managers called several witnesses, including Thomas Lehre and the register of the Court of Equity. Likewise, defense counsel consumed parts of two days for the introduction of evidence, calling Lining, Ann Lehre, and Judge Grimké, among others. Gibbes did not testify. The Court heard arguments on December 11, 12, 13, and 14, with the managers both opening and closing the debate.[68] The total amount of time consumed by legal argument is uncertain, but

61. S.C. SENATE J., Nov. 28, 1811.

62. *Id.*

63. S.C. SENATE J., Dec. 2, 1811.

64. Drayton and Simons were leaders of the Carolina bar. Drayton also served as recorder of Charleston and as a member of Congress. 1 O'NEALL, BIOGRAPHICAL SKETCHES, *supra* note 24, at 305-23. Simons was elected several times to the South Carolina House of Representatives. Recalling the Gibbes defense, a eulogy stressed Simons's "elaborate and dazzling eloquence, to which this State had long been a stranger. Those who heard the advocates of the accused, still recall, with delight, the emotions which were then kindled." 2 *id.* at 198.

65. Charleston Times, Dec. 7, 1811.

66. S.C. SENATE J., Dec. 3, 1811.

67. S.C. SENATE J., Dec. 6, 1811; Charleston Times, Dec. 11, 1811.

68. S.C. SENATE J., Dec. 6, 7, 9-14, 1811.

the presentation by defense counsel Simons on December 11 lasted two and a half hours.[69] When Pinckney concluded the case in behalf of the managers, the Court was cleared, presumably for the private deliberation of the members. On December 16 the Court voted on the three articles and defeated all of them decisively. Senators rejected the first article by a margin of 17 to 24, the second 5 to 36, and the third 17 to 24. The prosecution failed to obtain a majority on any allegation, much less the requisite two-thirds margin.[70] The most plausible explanation for the outcome is that the violation of judicial procedures, standing alone, would not support an impeachment, and the allegations of a fraudulent collusion on the part of the master did not stand up. After the President declared Gibbes acquitted the Court adjourned sine die, and the defendant was released from his recognizance.

Gibbes naturally was elated. Years later, in his memoirs, he attributed the proceedings against him to spite. "In 1811," he wrote, "a persecution against me by my Political Adversaries was commenced, for the secret tho real purpose of getting me out of office as Master in Equity. . . ." Gibbes asserted that "I was (of course) honorably acquitted and my Adversaries covered with shame and defeat."[71] Similarly, an evident Gibbes partisan wrote the Charleston *Courier* that "the Master in Equity has been most honorably acquitted by the Senate of all the charges in the impeachment against him, to the great satisfaction of all disinterested and good men, and the utter disappointment and confusion of his enemies, notwithstanding all their machinations and jealous contrivances."[72]

Outwardly the impeachment fight made little difference in Gibbes's judicial career. Gibbes continued to serve as master until December 1825, when he resigned after a term of forty-two years, apparently to enter the practice of law. He regularly conducted judicial sales for the Equity Court.[73] In 1818 the legislature granted Gibbes a leave of absence of twelve months from the state, a sign of possible reconciliation.[74]

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69. Charleston Times, Dec. 18, 1811.

70. S.C. SENATE J., Dec. 16, 1811.

71. Gibbes, *William Hasell Gibbes' Story of His Life,* 50 S.C. HIST. & GENEALOGICAL MAGAZINE 59, 66 (1949).

72. Charleston Courier, Dec. 21, 1811.

73. For sales conducted and guardianship accounts settled by Gibbes as master in equity, see Charleston Courier, Feb. 17, 1812; Jan. 10, 1819; Feb. 22, 1819; and Nov. 15, 1819. He was involved again in litigation of an official character. Gibbes v. Chisolm, 5 S.C.L. (2 Nott & McC.) 38 (1819).

74. 6 COOPER, STATUTES, *supra* note 10, at 100.

On the other hand, several events unmistakably indicate that resentment against Gibbes did not die with the impeachment. Two major pieces of legislation, enacted in sessions immediately following the trial, appear to strike directly at the Charleston master. An 1812 statute provided that tax collectors, ordinaries, clerks of court, and masters and commissioners of equity would be elected thereafter by the legislature for a term of four years.[75] A motion to exempt present office holders was defeated in the House 41 to 63,[76] and the act specifically noted that all designated officers "shall go out of office" on December 1, 1816. As a conspicuous long-term official, Gibbes must have been an intended target of this measure. Since he was commissioned for good behavior and already had triumphed over the 1800 effort by Governor Drayton to remove him from office, a constitutional question surely would have been posed by any attempt to apply the statute against Gibbes. Happily, the legislators reconsidered this scheme and the crisis was avoided. In 1816 the legislature declared that officials who were in office in 1812 and held commissions for good behavior "shall continue to hold their offices in the same manner as if that act had never been passed."[77]

A more telling blow at Gibbes was an 1813 measure that, in effect, created an additional judicial officer to handle equity business in Charleston. Reciting that "much inconvenience has arisen to the suitors and others in the Court of Equity of Charleston district, by reason of the great increase of business in that court, and of there being but one master of same," the statute provided that "a commissioner in equity shall be appointed, who, as well as the present master, shall exercise all the powers and authorities of, and perform all the duties incident to, the office of the said master . . . ." The presiding judge of the Equity Court was authorized to apportion judicial matters between the master and the commissioner, provided that "when the parties interested shall agree to refer their business either to the master or commissioner aforesaid, as they may choose," the judge was required to permit such choice absent some substantial reason.[78] Thomas Hunt promptly was named commissioner, and, judging from newspaper advertisements for sales, he enjoyed considerable favor with litigants, thereby re-

75. 5 COOPER, STATUTES, *supra* note 10, at 674-75.

76. Charleston City Gazette and Commercial Daily Advertiser, Dec. 10, 1812.

77. 6 COOPER, STATUTES, *supra* note 10, at 30.

78. 7 COOPER, STATUTES, *supra* note 10, at 315.

79. S.C. HOUSE J., Dec. 18, 1813. For sales conducted by Hunt as commissioner in equity, see Charleston City Gazette and Commercial Daily Advertiser, Jan. 6, 1818; Jan. 20,

ducing Gibbes's business.[79] Unable to get rid of Gibbes, hostile lawmakers undercut the importance of his position.

B. John F. Grimké

At first glance John F. Grimké would seem an unlikely candidate for an attempted impeachment. Born into a prominent Charleston family, he was educated at Cambridge and studied law at the Middle Temple. An ardent nationalist, when in London Grimke joined other Americans in a petition against the Boston Port Bill. Returning to his native state, he was commissioned an officer in the South Carolina artillery.[80] During the post-Revolutionary years Grimké advanced from one public honor to another. He sat in the state House of Representatives for nine years, serving as Speaker in 1785 and 1786.[81] In September of 1786 he was elected intendant of Charleston.[82] Grimké supported the adoption of the federal constitution and was a member of the state ratifying convention. In 1783 the legislature named him a judge of the Courts of Common Pleas and General Sessions of the Peace,[83] a post that he held under tenure for good behavior until his death in 1819. Since Grimké's duties involved extensive circuit riding, he gained statewide exposure as a judge. Grimké's activities by no means were confined to formal public service. He was concerned about internal transportation and supported both the Santee Canal Company and the Catawba River Company.[84] For years Grimké acted as president of the Catawba Company.[85] Anxious to compile and to reform Caro-

1818; Charleston Courier, Apr. 12, 1819.

80. For Grimké's early career and military service, see 1 O'NEALL, BIOGRAPHICAL SKETCHES, *supra* note 24, at 39; Grimké, *Journal of the Campaign to the Southward*, 12 S.C. HIST. & GENEALOGICAL MAGAZINE 60-69, 118-34, 190-206 (1911); *Order Book of John Faucher and Grimké*, 13 *id.* at 42-55, 89-103, 148-53, 205-12 (1912); 14 *id.* at 44-57, 98-111, 160-70, 219-24 (1913).

81. 1 Edgar, BIOGRAPHICAL DIRECTORY, *supra* note 23, at 187-223.

82. Charleston Evening Gazette, Sept. 11, 1786.

83. S.C. HOUSE J., Mar. 12, 1783.

84. The Catawba and Wateree Company was chartered by the legislature in 1787 for the purpose of constructing canals and opening river navigation between Camden and the North Carolina boundary. 7 COOPER, STATUTES, *supra* note 10, at 549-51. Never a successful venture, the financial position of the company was investigated by legislative commissioners in 1814. 5 COOPER, STATUTES, *supra* note 10, at 727. Observing that "the Catawba and Wateree Company have failed of effecting the objects of their incorporation: and whereas that company has consented to a surrender of their charter," the legislators in 1817 voted to pay the Catawba Company $20,000 in exchange for its charter and title to certain land. 6 COOPER, STATUTES, *supra* note 10, at 62-63.

85. Grimké was elected president of the Catawba Company at least as early as 1793. Charleston City Gazette and Daily Advertiser, Mar. 30, 1793. As president he frequently

lina statutes, he served as a commissioner to digest state statutes and in 1790 published his *Public Laws of the State of South Carolina.*[86] Grimké also authored a justice of the peace handbook, which appeared in three editions,[87] and a work on executors and administrators.[88]

Despite this high level of achievement, Grimké was increasingly unpopular with many Carolinians. The reasons are varied, but much of the problem related to the judge's strong personality. Even the sympathetic John B. O'Neall characterized him as a "stern, unbending Judge in a Court House."[89] As Grimké grew older he experienced periods of illness and missed scheduled court sittings. In 1807 the York District Grand Jury presented Grimké's nonattendance at court as a grievance.[90] Moreover, Grimké was prone to engage in private lawsuits and became involved in protracted litigation with Thomas Brandon over a tract of land in Union District.[91] So strong was up-country animosity against the judge that one of his sons, Thomas S. Grimké, wrote the following to a brother: "[T]he hostile feeling toward our father which prevails so extensively in this part of the Country, will be a great barrier to your success. His unpopularity must of necessity in some measure attach to you. . . ."[92] Grimké's relationship with the Catawba Company also proved controversial, and in 1810 the Chester County Grand Jury expressed

> our regrets that any of the Gentlemen of that Bench should be engaged in land speculations within this State where they are officially giving decisions on the titles of Land. We mean a connection with the Catawba Company in which it is well known that one of our most able and senior Judges is [sic] deeply interested and influential character and which are now filling the Courts in the neighborhood of the Catawba River with suits for the recovery of lands. . . .[93]

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petitioned the legislature on company business. S.C. SENATE J., Nov. 30, 1813; Dec. 1, 1814; Charleston City Gazette and Daily Advertiser, Dec. 18, 1801. Grimké was also a stockholder and director of the Santee Canal Company. Charleston City Gazette and Daily Advertiser, Jan. 19, 1802.

86. J. GRIMKÉ, THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA (Philadelphia 1790).

87. J. GRIMKÉ, THE SOUTH CAROLINA JUSTICE OF THE PEACE (Philadelphia 1788) (microprint, Virginia State Library). A second edition of the Grimké handbook appeared in 1796 and a third in 1810.

88. J. GRIMKÉ, THE DUTY OF EXECUTORS AND ADMINISTRATORS (New York 1797).

89. 1 O'NEALL, BIOGRAPHICAL SKETCHES, *supra* note 24, at 41.

90. Presentments of the Grand Jury of York District (Oct. term 1807), Grand Jury Presentments, State Archives, *supra* note 16.

91. Brandon v. Grimké, 10 S.C.L. (1 Nott and McC.) 356 (1818); Grimké v. Brandon, 11 S.C.L. (2 Nott and McC.) 382 (1820).

92. Letter from Thomas S. Grimké. to Henry Grimké (Feb. 1818), *reprinted in* 69 S.C. HIST. & GENEALOGICAL MAGAZINE 171, 189 (1968).

93. Presentments of the Grand Jury of Chester District (fall term 1810), Grand Jury

As early as 1796 an attorney publicly suggested Grimké's impeachment for misbehavior in office. Grimké countered by demanding a legislative investigation,[94] and the subsequent committee report fully exonerated him.[95] Notwithstanding this vindication, Grimké's popularity continued to sag. In an apparent reference to Grimké, the Grand Jury of Laurens District observed in November of 1812:

> It is a lamentable truth that we have at this time a civil officer high in commission, that if his term of office was now expired, he could not obtain one dozen votes to secure his reelection, either to fill the same office or any other in the state.[96]

The attempted impeachment of John Grimké was commenced by a private petition to the House of Representatives in November 1810. Filed by Samuel Farrow, an attorney and rising politician from Union District,[97] the memorial complained "of illegal and undue conduct in Judge Grimké."[98] O'Neall noted that "[f]or some reason" Grimké and Farrow "became inveterate enemies."[99] Indeed, earlier in 1810 Grimké was gathering evidence that Farrow had brought certain lawsuits through personal spite.[100] Farrow's petition was referred to a seven-man committee headed by Thomas Hunt of Christ Church. Grimké promptly wrote the Speaker requesting an investigation of the charges against him, and the House directed the committee to hear evidence on both sides of the Farrow allegations.[101] The text of the memorial and Grimké's letter seem to have been lost, but in late December the committee report was postponed until the start of the 1811 session.[102]

Presentments, State Archives, *supra* note 16. Grimké disqualified himself in at least one case concerning the Catawba Company: Waring v. Catawba Company, 2 S.C.L. (2 Bay) 109 (1797).

94. Letter from John F. Grimké to Speaker of House of Representatives (Dec. 3, 1796) (South Caroliniana Library, University of South Carolina).

95. S.C. HOUSE J., Dec. 7, 1796.

96. Presentments of the Grand Jury of Laurens District (Nov. term 1812), Charleston City Gazette and Commercial Daily Advertiser, Dec. 4, 1812.

97. After service in the Revolutionary War, Farrow practiced law in Spartanburg. He was elected Lieutenant Governor in 1810, was a member of Congress from 1813 to 1815, and thereafter was elected to the South Carolina House of Representatives. 2 O'NEALL, BIOGRAPHICAL SKETCHES, *supra* note 24, at 159-62; BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS, 1774-1961, at 876 (1961).

98. S.C. HOUSE J., Nov. 27, 1810.

99. 1 O'NEALL, BIOGRAPHICAL SKETCHES, *supra* note 24, at 40.

100. Letter from Isaac Pearson to John F. Grimké (Aug. 20, 1810); Affidavit of Charles Hurley (Sept. 26, 1810), Grimké Papers, South Carolina Historical Society.

101. S.C. HOUSE J., Nov. 28, 1810.

102. *Id.* Dec. 19, 1810.

On November 29, 1811, Hunt enumerated the charges against Grimké and concluded that "the said charges are supported by the evidence herewith reported."[103] Significantly, however, Hunt also observed "[t]hat a difference in opinion prevails in your committee, so as to render them unable to agree to any specific report or resolution."[104] Eight allegations were made against Grimké, and Hunt offered a series of resolutions to impeach the judge on each of the first five items. All of the charges turned upon Grimké's conduct on the bench:

1. The first charge alleged that Grimké illegally imprisoned four constables at the October 1807 Court of Sessions, Newberry District, for being absent from their posts. This motion failed by a vote of 54 to 50, gaining a narrow majority but not the two-thirds margin required by the Carolina Constitution.[105]

2. The second charge accused Grimké of ordering one John Grist to be stricken off the roll of constables in Spartanburg in November of 1806. This lost badly, 38 to 66.[106]

3. Charges three, four, and five alleged that Grimké acted inconsistently as judge and prosecutor by ordering that certain bills of indictment be given to grand juries in 1799, 1801, and 1810. Particularly grievous was Grimké's effort to secure an indictment against Thomas Brandon for forcible entry. Since the judge and Brandon were parties to a land dispute, the appearance was created that a vindictive Grimké was using his official position to strike at his antagonist.[107] Considered together, these items attracted the most pro-impeachment votes, but failed 56 to 47.

4. The remaining three charges concerned relatively minor matters, such as requiring the withdrawal of a criminal count

103. *Id.* Nov. 29, 1811.

104. *Id.*

105. *Id.* The presentation of the committee report and the voting on the charges all occurred on November 29, 1811.

106. The minutes of the Spartanburg Sessions Court for November 13, 1806, state, "John Grist was ordered to be struck from the list of constables." No explanation was given. Journals, Spartanburg District Court of General Sessions, 1806-1810, State Archives, *supra* note 16.

107. At the March 1810 term of the Court of General Sessions for Union District, with Judge Grimké presiding, the grand jury returned a true bill against Thomas Brandon for forcible entry. Journals, Union County Court of General Sessions, 1800-1811, at 197-99, State Archives, *supra* note 16. Curiously, at the October 1810 term Judge Thomas Waties granted the solicitor's motion to quash the indictment against Brandon and to prefer another bill. This time, however, the grand jury declined to return an indictment. *Id.* at 206-11.

and extra-judicial remarks by the judge about a pending case. Without a formal vote the House adopted a resolution that these charges were not sufficient to maintain an impeachment.

Apparently, little debate was held on the Farrow petition. Only Hunt spoke in favor of an impeachment. William Crafts, Jr., and George W. Cross of Charleston and Daniel E. Huger of low-country St. Andrew Parish defended the judge, with Huger stressing Grimké's service in the Revolutionary War.[108] This dearth of discussion may indicate that the lines of division were settled and that few representatives were open to persuasion. Interestingly, Grimké was present during the entire proceeding.[109]

One is struck with the flimsy and unconvincing character of many of the allegations against Grimké. Several of the charges were clearly stale, dating back as far as 1799, and in fact only a few could be described as current. None of the charges attributed criminal conduct to Grimké, indicating that the impeachment sponsors did not read the constitutional standard "any misdemeanor in office" as requiring a criminal offense. Considered in the least favorable light to Grimké, the allegations contended that he abused his position as judge by arbitrary rulings.

Further, the voting on the Grimké impeachment was highly sectional in nature. Grimké's support primarily was found in Charleston and the low-country parishes. The Charleston delegation backed him 15 to 0 on the first charge, 14 to 1 on the second, and 12 to 2 on the third. In contrast, representatives from the up-country districts, such as York, Edgefield, Spartanburg, Chester, Newberry, and Pendleton, voted heavily in favor of impeachment.[110] Although the House consisted of 124 members, no more than 104 voted on any article. Hence, the large number of absentees—perhaps because the session just had commenced—may have been decisive.

Implicit in the geographic divisions that characterized the impeachment debate were socioeconomic differences. Low-country Carolina was dominated by large coastal plantations worked by slave labor. The cultural and political life of the low-country was centered in Charleston. In marked contrast, the up-country was a

108. Charleston Courier, Dec. 5, 1811; 1 O'NEALL, BIOGRAPHICAL SKETCHES, *supra* note 24, at 41. In a curious twist of fate Huger was elected as a judge to replace Grimké in December of 1819. He later served briefly in the United States Senate. 1 O'NEALL, BIOGRAPHICAL SKETCHES, *supra* note 24, at 180-84.

109. Charleston Courier, Dec. 5, 1811.

110. Edgar, BIOGRAPHICAL DIRECTORY, *supra* note 23, provides House membership lists arranged by election districts.

land of yeoman farmers and few slaves. Although after 1800 a new cotton gentry began to emerge in the up-country, the small farmer remained dominant in many districts.[111] For years following the Revolution, sectional strife was an element of Carolina politics, and impeachment would prove no exception. To many in the up-country, Grimké must have appeared as a judicial representative of the coastal aristocracy.

Outwardly the impeachment attempt made little difference in Grimké's judicial career. He was present at the January and May 1812 terms of the Constitutional Court[112] and continued to serve actively until at least the spring of 1818, but apparently not thereafter.[113] Obviously Grimké's Charleston friends did not abandon him, for in the year following the impeachment move he was elected a director of the Santee Canal Company[114] and the Deputy Grand Master of the Lodge of South Carolina.[115]

Nevertheless, many Carolinians continued to hold Grimké in disfavor. His request for an eight-month leave of absence was tabled abruptly by the House in 1812.[116] With the failure of the Grimké impeachment the legislature turned its attention to judicial salaries as a means to accomplish removal. Although the compensation of judges could not be lowered during their continuance in office, the lawmakers adopted a salary increase scheme designed to penalize judges out of favor with the General Assembly. In 1817 the legislators increased the salaries of both law and equity judges "hereafter elected" to 3,500 dollars per year.[117] Most of the jurists promptly resigned and were re-elected in order to qualify for the higher stipends. Only the ailing Elihu Hall Bay and Grimké continued to serve at the lower rate of 2,572 dollars. An historian of South Carolina observed that "the intensely unpopular Judge Grimké . . . could not possibly have won re-election."[118] The final measure of Grimke's unpopularity occurred after his death. Mary Grimké, as

111. W. FREEHLING, PRELUDE TO CIVIL WAR: THE NULLIFICATION CONTROVERSY IN SOUTH CAROLINA, 1816-1836, at 7-24 (1966).

112. 1 TREADWAY, DECISIONS IN THE CONSTITUTIONAL COURT (1923); Charleston Courier, May 11, 1812.

113. Grimké presided over a murder trial in April of 1818. Charleston City Gazette and Commercial Daily Advertiser, April 6, 1818. He attended the May 1818 term of the Constitutional Court in Columbia and participated in nearly all the decisions rendered.

114. Charleston City Gazette and Commercial Daily Advertiser, Jan. 21, 1812; Jan. 28, 1818.

115. Charleston City Gazette and Commercial Daily Advertiser, Dec. 21, 1812.

116. S.C. HOUSE J., Aug. 24, 1812.

117. 6 COOPER, STATUTES, *supra* note 10, at 69.

118. 2 D. WALLACE, HISTORY OF SOUTH CAROLINA 459 (1934).

executor for her husband, petitioned the legislature in November of 1819 for the customary payment of the full salary for the quarter in which the judge died.[119] Despite House approval, the request was defeated 15 to 20 by the Senate.[120]

C. *John Clark*

The impeachment of John Clark, sheriff of Laurens District, was undertaken while the Gibbes and Grimké matters were pending. Clark's impeachment, however, differed in several respects from the other contemporaneous proceedings. First, it was prompted by an official gubernatorial message rather than a private complaint to the legislature. Secondly, a crime of violence was involved, not a lapse of judicial behavior, and hence posed no question regarding the scope of impeachable offenses.

Clark remains an obscure figure. In December 1807 he was elected sheriff by the legislature,[121] and later the same month Clark posted a bond of 7,000 dollars for the faithful discharge of his duties and received a commission for a term of four years.[122]

In November 1810 outgoing Governor John Drayton submitted to the House "information of improper conduct of the Sheriff of Laurens District, which I think it would be improper in me to withhold from you."[123] Apparently, in September of 1809 Clark held in his custody one Robert Turner, who was under indictment for grand larceny. Clark proceeded to torture Turner for the purpose of extorting information relative to the alleged theft. Turner subsequently was convicted of grand larceny at the April 1810 term of the Court of General Sessions held before Judge Waties. In an unusual move, however, Waties deferred passing sentence so that Turner "might have an opportunity of applying for a pardon."[124] Governor Drayton promptly pardoned Turner,[125] but the outcry over Clark's conduct was only just beginning.

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119. S.C. HOUSE J., Nov. 23, 1819; Petition of Mary Grimké, General Assembly Petitions (n.d.), State Archives, *supra* note 16; Committee on Claims on the Petition of Mary Grimké, Report, General Assembly Committee Reports (Nov. 27, 1819), State Archives, *supra* note 16.

120. S.C. SENATE J., Dec. 10, 1819.

121. *Id.* Dec. 5, 1807.

122. Misc. Rec., vol. B, at 467, 472, State Archives, *supra* note 16.

123. 2 J. Drayton, Journal of the Executive of South Carolina, Message no. 4, at 95-96 (1808-1810) (microfilm), State Archives, *supra* note 16.

124. Laurens County General Sessions Journal (Apr. term 1810) (microfilm), State Archives, *supra* note 16; Misc. Rec., vol. BBBB at 285, State Archives, *supra* note 16.

125. Drayton issued a pardon on April 27, 1810. Misc. Rec., vol. BBBB, at 285, State Archives, *supra* note 16.

Turner petitioned Governor Drayton, supported by letters from Turner's father, Judge Waties, and John C. Calhoun, complaining of his treatment by Clark. Drayton, who already had granted the pardon, was obviously incensed. Writing to the presiding judge at the next Sessions Court for Laurens, the Governor decried "a scene of cruelty which has been practiced upon the body of the said Robert Turner by the Sheriff of Laurens District while in his custody as Sheriff; which is distressing to the feelings of sensibility and highly dishonorable to the Sheriff, who instead of being his Prosecutor while under his custody ought to have been his Protector."[126] He asked the judge to deliver the papers to the district solicitor for an investigation of Clark, and the Governor requested "him particularly to take all lawful measures to try, convict and bring to due punishment the said Sheriff should the charges be duly proved against him."[127]

In November of 1810 the grand jury for Laurens District indicted Clark and "others" on two counts of riot. The defendants were ordered to come before the court and to post security for their appearance at the next General Sessions.[128] Clark pleaded guilty to both counts in April of the following year and was fined ten dollars for each offense.[129]

Drayton's message to the House, sent shortly after the indictment of Clark,[130] was referred to a committee that examined several witnesses under oath and considered documents submitted. The committee did not report until December of 1811, and then the body surprisingly divided 3 to 3 on a motion to urge the impeachment of Clark. After debate on December 7, the House adopted an impeachment resolution by a lopsided vote of 100 to 5.[131] Thereafter the House named a three-man committee to draft articles of impeachment and to manage the prosecution against Clark.[132] The Senate

126. Letter from Gov. John Drayton to presiding judge, Sept. 24, 1810, J. Drayton, Journal of the Executive of South Carolina (microfilm), State Archives, *supra* note 16.

127. *Id.*

128. Laurens County General Sessions Journal (Nov. term 1810) (microfilm), State Archives, *supra* note 16.

129. Laurens County General Sessions Journal (Apr. term 1811) (microfilm), State Archives, *supra* note 16.

130. S.C. HOUSE J., Nov. 28, 1810.

131. The Laurens delegation split 2 to 2 on the impeachment vote, possibly indicating some local sympathy for Clark. One of those supporting Clark was Robert Word, Clark's predecessor as sheriff. S.C. HOUSE J., Dec. 7, 1811.

132. Benjamin Huger of Prince George, Thomas Hunt of Christ Church, and Abraham Blanding of Kershaw were named to conduct the impeachment of Clark. S.C. HOUSE J., Dec. 7, 1811. Interestingly, all of these managers had opposed the impeachment of Gibbes. In

was notified immediately of these developments. On December 10 the House adopted a single article of impeachment charging that Clark "without any legal authority and in violation of the duties of his said office" permitted Turner "to be cruelly and inhumanly tortured by whipping and burning his feet at a slow fire" for the purpose of obtaining a confession.[133]

Already in the middle of the Gibbes impeachment, the Senate slowly began to organize a court for the Clark matter. A warrant was issued to South Carolina sheriffs to take Clark into custody unless he provided a personal recognizance of 1000 dollars and two securities of 500 dollars each for his appearance. The President of the Senate was authorized to issue subpoenas on the application of either the managers or the defendant.[134] On December 16, the same day that the Senate acquitted Gibbes, it formed a court to hear the Clark trial. After the administration of the oath "to do impartial justice," Clark appeared and asked to be represented by Thomas H. Egan.[135] Defense counsel requested additional time to prepare an answer. The managers opposed granting "more time than was absolutely necessary," and following a closed session the Court allowed a delay of two days.[136] Clark's answer was filed on December 18, whereupon the managers announced that they were ready for trial. When Egan sought a further postponement to obtain evidence, Manager Benjamin Huger "spoke to the motion and submitting [sic] to the Court the propriety of an early trial." Doubtless tired after the Gibbes deliberations and with the end of the session approaching, the senators unanimously granted the motion for additional time and by a vote of 37 to 2 allowed the defendant until the next December to prepare for trial.[137] Clark was required to enter into a new recognizance.[138]

When the Senate resumed consideration of the Clark matter on December 1, 1812, a general election had been held since the last meeting of the Court. Hence, it was necessary to administer the oath "to the other members of the Senate who were lately returned for

November of 1812 the House appointed an entirely new set of managers—John D. Heath of Charleston, Chesley Daniel of Marion, and Anderson Crenshaw of Newberry. S.C. HOUSE J., Nov. 28, 1812.

133. *Id.* Dec. 10, 1811.

134. S.C. SENATE J., Dec. 14, 1811.

135. Egan was a prominent lawyer in Columbia, but apparently never reached the top of the bar. 2 O'NEALL, BIOGRAPHICAL SKETCHES, *supra* note 24, at 231-32.

136. S.C. SENATE J., Dec. 16, 1811.

137. *Id.* Dec. 18, 1811.

138. *Id.* Dec. 19 & 21, 1811.

their respective Districts and Parishes, and to such as had not formerly qualified."[139] The managers then requested additional time to collect evidence; the request was granted after defense counsel agreed. The trial began on December 8, and in the course of two days the managers called six witnesses. Although the substance of the testimony was not preserved, one inquiry is suggestive of the likely direction of the questioning. A witness was asked, "Will you state to the Court what you know in relation to Turner's hand being screwed in a wooden vice, by authority of the Sheriff, immediately antecedent to his being committed to gaol?"[140] Defense counsel used part of December 9 to call five witnesses and then rested his case.[141] Clark did not testify. All witnesses were subject to cross-examination.

The Court heard arguments of counsel on December 10, 11, and 12, with the managers again both opening and closing the debate. Immediately following the conclusion of the arguments the Court was cleared. When the doors were opened the senators unanimously proceeded to find the defendant guilty as charged.[142] Following another executive session, the Court invited the members of the House to attend the sentencing of Clark. The President of the Senate pronounced sentence that Clark "be disqualified from holding any office of honor, trust, or profit under the State for the term of four years."[143] Clark was discharged from his recognizance and the Court adjourned sine die. The conviction came more than three years after the torture of Turner and about two years after Governor Drayton's message to the House.

Apparently Clark was no longer sheriff when the verdict was rendered. His four-year commission would have expired at the end of 1811, and under the Constitution he was ineligible for reelection. The records of the trial refer to him as the "late Sheriff of Laurens District." Since Clark already had left office, future disqualification was the sole penalty open to the senators. One only can speculate why Clark, who already had pleaded guilty to criminal charges growing out of the Turner incident, struggled so hard to defeat the impeachment. The House vote clearly revealed that he faced a difficult uphill fight, and Clark realistically could not have expected his official career to continue.

139. *Id.* Dec. 1, 1812.
140. *Id.* Dec. 8, 1812.
141. *Id.* Dec. 9, 1812.
142. *Id.* Dec. 12, 1812.
143. *Id.*

D. *Matthew O'Driscoll*

Local officeholders and lower court judges exercised considerable power in early nineteenth century Carolina; thus, not surprisingly, the legislature occasionally received complaints about their behavior. For example, in 1806 the grand jury for Pendleton District urged that the ordinary not keep the court office in his home.[144] Similarly, a memorialist complained of the "deranged state of the papers" in the Williamsburgh clerk's office.[145] Charges in 1813 against the ordinary of Newberry District for "malpractice in office" caused the House to adopt, by a vote of 75 to 33, a resolution that "there is and ever has been the greatest confusion and irregularity in keeping the office. . . ."[146] The ordinary was invited to testify before the committee "in order that he may have an opportunity of making his innocence appear."[147] A year later, however, after receiving evidence from the accused, the committee concluded that "the charges have not been supported, and recommend to the House the rejection of the memorial."[148] In one instance, the case of Dr. Matthew O'Driscoll, the lawmakers were persuaded to employ the impeachment process against an ordinary and clerk of court.

A native of Ireland, O'Driscoll was educated at the College of Saint Omers and emigrated to this country in 1794.[149] Although O'Driscoll's first years in South Carolina are shadowy, he lost little time in running afoul of the legal system. In May of 1798 a General Sessions jury in Charleston found O'Driscoll guilty of two misdemeanor counts for having sent a challenge to a duel and for having libeled the other party when he declined to accept. Judge Grimké sentenced O'Driscoll to serve two months in prison and to pay a fine of 150 dollars. Defendant's motion for a new trial was denied unanimously by the Constitutional Court.[150] Evidently this conviction did not destroy O'Driscoll's popular esteem since Governor Charles Pinckney, upon receipt of a petition "sigued by a large number of

144. Presentments of the Grand Jury of Pendleton District (March term 1806), Grand Jury Presentments, State Archives, *supra* note 16.

145. Report on the Memorial of Joseph Holden, General Assembly Committee Reports (Dec. 1814), State Archives, *supra* note 16.

146. S.C. HOUSE J., Nov. 23, Dec. 2, 1813.

147. *Id.*

148. S.C. HOUSE J., Dec. 13, 1814.

149. *Records from the Blake and White Bibles*, 36 S.C. HIST. & GENEALOGICAL MAGAZINE 42, 48 (1935); 37 *id.* at 38 (1936). St. Omers was a college in France for English and Irish Catholics. *See* W. ARMYTAGE, FOUR HUNDRED YEARS OF ENGLISH EDUCATION 68 (2d ed. 1970); H. CHADWICK, ST. OMERS TO STONYHURST: A HISTORY OF TWO CENTURIES (1962).

150. State v. O'Driscoll, 2 S.C.L. (2 Bay) 153 (1798).

respectable citizens," promptly pardoned the doctor.[151]

In December of 1799 the legislature named O'Driscoll ordinary and clerk of court for Colleton District.[152] Courts of ordinary,modeled after the ecclesiastical tribunals of England, exercised probate jurisdiction. In post-Revolutionary South Carolina each judicial district had a court of ordinary.[153] Early in 1800 O'Driscoll posted a bond for the faithful discharge of his duties and received a commission "during good behavior."[154]

Like Gibbes and Grimké, O'Driscoll's career was marked by extensive litigation of both private and official character.[155] As his conduct in the duel challenge case indicates, O'Driscoll was quarrelsome and over a period of time antagonized numerous people who conducted business with him. He became involved in a bitter running feud with Dr. Hugh McBurney, also of Colleton. Little is known about McBurney. He received compensation from the state legislature for rendering medical attention, apparently to prisoners, and in 1806 was named a commissioner to superintend the repairs on the Colleton jail.[156] O'Driscoll instituted a host of lawsuits against McBurney for conspiracy, slander, libel, and malicious prosecution, and his bad relations with McBurney ultimately led to impeachment and removal.[157]

In November of 1812 McBurney petitioned the legislature for an inquiry into the conduct of O'Driscoll as clerk, ordinary, and register. Although the surviving text of the memorial is incomplete, the substance of McBurney's complaint was that O'Driscoll used his official position to harass the petitioner.[158] By early December the investigative committee concluded that "the said Matthew O'Driscoll has acted illegally in his office as clerk and ordinary."[159]

151. Misc. Rec., vol. III, at 434, State Archives, *supra* note 16.

152. S.C. HOUSE J., Dec. 21, 1799.

153. Guest, *The Court of Ordinary,* 6 YEAR BOOK OF THE SELDEN SOCIETY 40, 42 (1942).

154. Misc. Rec., vol. QQQ, at 17; vol. OOO, at 243, State Archives, *supra* note 16.

155. O'Driscoll v. McCants, 2 S.C.L. (2 Bay) 323 (1801); O'Driscoll v. Viard, 2 S.C.L. (2 Bay) 316 (1801); James v. O'Driscoll, 2 S.C.L. (2 Bay) 101 (1797); O'Driscoll v. Koger, 1 S.C. Ch. (2 Des.) 295 (1805).

156. S.C. HOUSE J., Dec. 19, 1809, Dec. 15, 1810, Dec. 20, 1806.

157. These suits are described in "Evidence given hefore the Committee of the House of Representatives appointed on the Memorial of Dr. McBurney," General Assembly Committee Reports (Nov. 1813), State Archives, *supra* note 16. *See generally* O'Driscoll v. McBurney, 4 S.C.L.(2 Brev.) 451 (1811); Journals [of the] Constitutional Court, 1811-1816, at 16, State Archives, *supra* note 16.

158. Memorial of McBurney, General Assembly Petitions (1812), State Archives, *supra* note 16; S.C. HOUSE J., Nov. 24, 1812.

159. Committee upon the Memorial of Hugh McBurney, Report, General Assemhly Committee Reports (Dec. 9, 1812), State Archives, *supra* note 16.

In order to give the accused an opportunity to be heard, however, the committee recommended that further proceedings on the memorial be postponed until the next legislative session. In addition, the committee was empowered to subpoena persons and records.[160]

Both written and oral evidence was presented to the committee during hearings in late November 1813. Several witnesses testified concerning delays in the transaction of judicial business occasioned by O'Driscoll's conduct. Evidence also was presented of errors in recording documents and issuing letters testamentary.[161] In particular, McBurney and others testified to O'Driscoll's use of his official position to harass McBurney. Especially glaring was O'Driscoll's 1806 refusal to accept a plea filed by McBurney to a lawsuit commenced by O'Driscoll until the time to answer had expired. This pattern of misconduct reached its culmination in March 1812, when McBurney sought to have certain judicial papers signed and O'Driscoll responded by calling him a "damned rascal," threatening to kick him, and brandishing a stick.[162] Based upon this evidence, on December 3 the committee urged the impeachment of O'Driscoll as clerk and ordinary on grounds that he "has been guilty of oppression, illegal conduct and negligence and ought to be impeached for misdemeanors in office."[163] The committee further declared that the evidence was insufficient to maintain an impeachment of O'Driscoll in his capacity as register.

On December 4 and 6 the House considered the committee report. The lawmakers impeached O'Driscoll as clerk of court by a vote of 88 to 21 and similarly impeached him as ordinary by an overwhelming vote of 84 to 9.[164] As in the case of Sheriff Clark, the impeachment tally was so one-sided that sectional lines do not appear clearly. Nevertheless, virtually all of the votes against the resolutions came from low-country districts. For instance, the representatives from the parishes comprising Colleton District split 3 to 3 on the first resolution, and the Charleston delegation divided 8 to 7 in favor of this impeachment.[165]

A three-man committee promptly was appointed to prepare the

160. S.C. HOUSE J., Dec. 14, 1812.

161. "Evidence given before the Committee of the House of Representatives appointed on the Memorial of Dr. McBurney," General Assembly Committee Reports (Nov. 1813), State Archives, *supra* note 16.

162. *Id.* at 5-6, 14.

163. Committee on the Memorial of Dr. McBurney, Report, General Assembly Committee Reports (Dec. 3, 1813), State Archives, *supra* note 16.

164. S.C. HOUSE J., Dec. 4, 6, 1813.

165. *Id.*; 1 Edgar, BIOGRAPHICAL DIRECTORY, *supra* note 23, at 283-87.

articles and to conduct the impeachment.[166] The House adopted the four articles presented by the committee:[167]

1. "That regardless of the solemn duties of his office and his sacred obligation to discharge them impartially and without respect to persons," in 1806 O'Driscoll as clerk had refused to file pleadings for McBurney.
2. "That in gross violation of his official duties, to the great delay of justice and the manifest oppression of the citizens," O'Driscoll had threatened McBurney in March of 1812.
3. "That disregarding the rules imposed by law for the government of the Clerks of Court," O'Driscoll had failed to keep his office open at various periods of time since 1806.
4. That in his capacity as ordinary O'Driscoll wrongfully had refused to grant certain letters of administration and had failed to keep his office open at various periods since 1805.

If substantiated by proof, these charges demonstrated that O'Driscoll was sloppy and negligent in his duties, short-tempered with applicants, and partisan in dealing with McBurney. Obviously he was not an ideal judicial officer or clerk. As in the Grimké proceedings, however, many of the allegations were stale, relating to conduct that occurred as much as eight years previously. Moreover, with the exception of the 1812 abusive language and threat to assault McBurney, O'Driscoll's admittedly undesirable behavior was not criminal in character. Once again the South Carolina House had adopted a broad reading of the impeachment article.

On December 9 the House informed the Senate of its action. The next day the senators approved the report of the committee on arrangements, which set the rules to govern the trial. In addition, the Senate resolved itself into a court for the purpose of issuing subpoenas to compel witnesses on behalf of the prosecution.[168] On December 11 the president administered the oath to the senators and the proceedings began. O'Driscoll appeared with his counsel, Abraham Blanding, a prominent lawyer and former legislator.[169] At Blanding's request, the Court granted additional time for the de-

166. John Felder of Orange District, William Crafts, Jr., of Charleston, and Chapman Levy of Kershaw District were named managers. S.C. HOUSE J., Dec. 6, 1813. Crafts had been one of Judge Grimké's most vigorous defenders.

167. S.C. HOUSE J., Dec. 9, 1813.

168. S.C. SENATE J., Dec. 10, 1813.

169. For a description of Blanding's career, see 2 O'NEALL, BIOGRAPHICAL SKETCHES, *supra* note 24, at 236-43. He represented Kershaw District in the House for two terms and was among the managers who prepared the Clark articles of impeachment in 1811.

fense to submit an answer. By a vote of 24 to 6 the senators authorized the president to summon defense witnesses. On December 14 O'Driscoll filed a brief plea, which stated that "there is no misdemeanor particularly charged or exhibited against him in the Articles . . . to which he is or can be bound by law to make answer" and maintained that he was not guilty.[170] Blanding then moved that the trial be postponed until the following November, which motion carried 32 to 4. The senators directed that either O'Driscoll or the managers could remove necessary papers from the clerk's and ordinary's office. O'Driscoll's bond was continued pending the trial.[171]

When the Senate met in late November 1814, Blanding requested a commission to take additional testimony.[172] The managers objected, reasoning that "every facility had been given to obtain the testimony now required, and that it appeared to be for the purpose of delay."[173] Nonetheless, after an executive session, the Court agreed to a commission. Similarly, with the consent of the managers, Blanding secured a further postponement until December 9 for the start of the trial.

The trial itself was the longest of those in this period, requiring parts of eleven days. The managers opened with a presentation of "the general principles of law applicable to impeachment" and then called McBurney as their first witness.[174] Over the course of four days the managers summoned nine witnesses for examination and cross-examination.[175] Most of them had appeared a year earlier before the House investigation committee. Like the managers, Blanding started with an exposition of impeachment law. He presented fourteen witnesses, including the defendant, Judge Grimké, and Chancellor Henry William Desaussure, in the space of three days. The defense strategy is indicated by Blanding's successful motion "for leave to introduce evidence to prove the malice of the witness Doctor McBurney toward the respondent Dr. O'Driscoll for the purpose of discrediting his testimony."[176] James Rutledge, a member of the Senate from one of the parishes in Colleton District, gave rebuttal testimony for the managers. The evidence closed with the testimony of Senator Frederick Nance of Newberry, who was called by the defense.[177] The Court heard the arguments of counsel on Decem-

170. S.C. SENATE J., Dec. 14, 1813.
171. *Id.*
172. *Id.* Nov. 29, 1814.
173. *Id.* Nov. 30, 1814.
174. *Id.* Dec. 9, 1814.
175. *Id.* Dec. 9-13, 1814.
176. *Id.* Dec. 15, 1814.
177. *Id.* Dec. 16, 1814.

ber 17, 19, 20, and 21, with the managers both opening and finishing the debate.

After the completion of the argument, the Court was cleared for private deliberation. In the subsequent balloting the Court found O'Driscoll guilty, by a margin of 29 to 9, on only the second article. Article I mustered a majority, 24 to 14, as did Article III, 20 to 18, but failed to meet the two-thirds requirement.[178] Article IV, pertaining to O'Driscoll's duties as ordinary, was defeated 12 to 26, not even receiving a majority. In its sentence the Court directed that O'Driscoll "be removed from office and be disqualified from holding any office of honor, trust or profit under this State for the term of three months."[179] In view of O'Driscoll's multiple offices, this pronouncement is not free from ambiguity. Although O'Driscoll was not impeached as register and was found not guilty as ordinary, the broad language of the Court could be understood as disqualifying him from these posts along with the position of clerk. Removal from every state office would enhance greatly the penalty for impeachable conduct, but one may question the propriety of ousting a defendant from a position concerning which an impeachment attempt failed. In fact, apparently O'Driscoll was removed from all his posts, since in February of 1815 the governor named interim appointees as clerk and ordinary.[180]

Significantly, O'Driscoll was found guilty only on Article II, which concerned his abuse and harassment of McBurney in 1812. The allegation and the supporting evidence, as set forth by the House committee, indicate that such conduct may have been criminal in character, constituting an assault or criminal libel.[181] Of course, one cannot be certain why the other articles were defeated. As in the Gibbes trial, obviously much conflicting testimony was presented, and the Court was required to reach an essentially factual determination on many points. Perhaps the evidence was simply insufficient to sustain the other allegations. Possibly, however, the senators were unimpressed with many of the items because they were so untimely. In any event, the conviction on Article II alone suggests that the Senate, unlike the House, may have read the phrase "any misdemeanor in office" as requiring criminal behavior. To be sure, a majority of senators voted to sustain two articles not

178. *Id.* Dec. 21, 1814.

179. *Id.*

180. Misc. Rec., vol. GGGG, at 502, 510, 511, State Archives, *supra* note 16.

181. O'Driscoll's treatment of McBurney in 1812 seems to fit within the prevailing definition of assault. J. GRIMKE, THE SOUTH CAROLINA JUSTICE OF THE PEACE 26 (2d ed. 1796).

alleging criminality, but both convictions obtained during these years—Clark and O'Driscoll—apparently were based upon criminal activity.

The impeachment voting produced no identifiable sectional cleavage. Many low-country representatives supported conviction, as well as a large number of up-country senators. Illustrating this crazy-quilt pattern, the senators from Colleton split 2 to 1 in favor of conviction, and those from Charleston divided 1 to 1. On the other hand, representatives from low-country St. James Goose Creek and St. Andrew Parishes and from up-country Fairfield, Marlborough, and Newberry Districts consistently voted not guilty.[182] Following the example of the other impeachments, only thirty-eight of forty-five senators cast ballots, and thus the absent members could have proved decisive on Articles I and II.

O'Driscoll devoted the years following his conviction to a futile effort to vindicate himself. The feud with McBurney continued unabated. McBurney presented a memorial complaining about O'Driscoll's official conduct to the grand jury. When the jurors took no action, O'Driscoll sued McBurney for malicious prosecution but was nonsuited.[183] More interesting was O'Driscoll's attempt to attack collaterally the impeachment conviction. O'Driscoll refused to deliver the books and records of the clerk's office to the newly appointed official, and proceedings were instituted to hold him in contempt of court.[184] He argued that the Senate proceedings were unconstitutional on grounds that a clerk could be removed only by the governor after conviction by a jury, that he held a freehold in his office, and that the offense for which he was convicted had been committed more than six months before the prosecution. The Constitutional Court, with Judge Grimké participating, unanimously rejected all of these objections in seriatim opinions. Judge Brevard described the impeachment process in sweeping language:

> The trial by jury, as heretofore used, is no ways inconsistent with the trial of impeachments for State delinquency and misbehaviour in office, where the object is to punish for official neglect or abuse, and remove the officer as a public nuisance. Besides, so far from considering the trial by impeachment as oppressive, it appears to me a great constitutional privilege, an honorable distinction in favor of distinguished citizens . . .; and the rights of the accused on such trials are cautiously guarded and greatly favored.[185]

182. E. REYNOLDS & J. FAUNT, BIOGRAPHICAL DIRECTORY OF THE SENATE OF THE STATE OF SOUTH CAROLINA, 1776-1964, at 35 (1964).

183. O'Driscoll v. McBurney, 11 S.C.L. (2 Nott & McC.) 54 (1819); O'Driscoll v. McBurney, 11 S.C.L. (2 Nott & McC.) 58 (1819).

184. State v. O'Driscoll, 5 S.C.L. (3 Brev.) 526 (1815).

185. *Id.* at 528.

His opinion also declared that "it is not for this court to rectify, or condemn the proceedings and judgment of the high court of impeachment; the constitution has given no such power . . . ."[186] Not only did the court deny judicial authority to review an impeachment conviction, but the remarks of Judge Brevard about "official neglect or abuse" suggest that he did not envisage impeachment to be restricted to criminal offenses. Although not binding on a future Senate trial, such comments would lend support to a broad reading of the impeachment clause.

E. John Simpson

The legislative handling of the complaints against John Simpson, clerk of court for Lancaster District, indicates a desire to fashion an alternative to impeachment as a means of removal. Following his election as clerk, in February 1800 Simpson received a commission during good behavior.[187] A decade later, however, he evidently had fallen from favor with Lancaster residents. Both the April and October 1813 grand juries complained of Simpson's mismanagement of the clerk's office:

> Also we present as a grievance the bad situation which the papers belonging to Lancaster District in the Clerk's Office and also the papers in the office of the register of conveyance are kept through the neglect of the Clerk of Court.[188]

In late 1813 the House appointed a committee to consider these presentments.[189]

The following year a House committee concluded that Simpson "has been guilty of illegal and improper conduct as clerk; and has neglected the duties of his office,"[190] whereupon the lawmakers adopted a resolution of impeachment "for misdemeanors in office" and named managers to draft articles of impeachment.[191] When the articles were prepared, however, the House deferred action upon them in order to study "whether there be any other mode authorized by law of removing Clerks of Courts from office than by impeach-

186. *Id.* at 529. For the full text of this decision, see Opinions of the Judges of the Constitutional Court, at 294-98, State Archives, *supra* note 16. Judge Grimké declared, "I am therefore of opinion that under the Constitution no civil officer can be removed from his freehold but by impeachment before the Senate." *Id.* at 298.

187. Misc. Rec., vol. OOO, at 244, State Archives, *supra* note 16.

188. Presentments of the Grand Jury of Lancaster District (Oct. term 1813, Apr. term 1813), Grand Jury Presentments, State Archives, *supra* note 16.

189. S.C. HOUSE J., Dec. 15, 1813.

190. *Id.* Dec. 10, 1814.

191. *Id.*

ment."[192] A committee later reported that a clerk either could be impeached or indicted and that the governor could remove from office a clerk found guilty upon an indictment. Apparently anxious to avoid another impeachment on the heels of the O'Driscoll trial, the House voted to suspend further action against Simpson. Instead, the lawmakers directed the solicitor of the Middle Circuit to indict Simpson before the next Court of General Sessions in Lancaster and resolved to notify the governor if Simpson were found guilty.[193]

Since the court records of Lancaster District are incomplete, it is uncertain how far the criminal prosecution against Simpson was carried. He continued to serve as clerk through 1816, a sign that no indictment was sustained.

III. Impeachment Procedures

A heightened concern for the rights of the accused was one consequence of the Revolution,[194] and this attitude characterized the South Carolina impeachment procedures. Before the voting of any charges, the accused—Grimké, Gibbes, Clark, O'Driscoll—were given an opportunity to appear before the House investigating committee. Although formal articles of impeachment were not prepared until after the House adopted a motion to impeach, the basis of the various complaints was sufficiently clear to enable the accused to prepare a defense. As early as the 1807 trial of Daniel D'Oyley, the Carolina Senate began to formulate rules to govern impeachment hearings.[195] In November of 1811 the Senate adopted a committee report that recommended rules to govern the Gibbes proceeding and to serve "as standing Rules of the Senate in all future cases of impeachment."[196] No new regulations were proposed for the Clark trial in 1812. A separate set of rules was voted for the O'Driscoll proceeding, but they were substantially identical to the 1811 regnlations.[197] Although in large measure concerned with formal arrange-

192. *Id.* Dec. 13, 1814.

193. *Id.* Dec. 19, 1814.

194. W. Nelson, Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830, at 97-101 (1975).

195. S.C. Senate J., Dec. 1, 1807. The procedural aspects of federal impeachments recently have claimed the attention of scholars. Futterman, *The Rules of Impeachment*, 24 Kan. L. Rev. 105 (1975); Williams, *The Historical and Constitutional Bases for the Senate's Power to Use Masters or Committees to Receive Evidence in Impeachment Trials*, 50 N.Y.U.L. Rev. 512 (1975).

196. S.C. Senate J., Nov. 29, 1811.

197. *Id.* Dec. 10, 1813.

ments and seating, the rules affirmed the Senate's commitment to due process safeguards for the defendant.

The rules provided that "[c]ounsel for the parties shall be admitted to appear and be heard upon an impeachment,"[198] and each defendant during this period in fact was represented by apparently able counsel. Further, the procedure provided for the cross-examination of witnesses "in the usual form,"[199] a right regularly exercised by counsel. The rules also permitted testimony by members of the Court, and during the O'Driscoll trial two senators testified, one for each side. Although not covered by the formal rules, the Senate always extended the power to subpoena persons and documents to both the managers and the accused. In addition, on one occasion the senators granted, over the objection of the managers, a defense motion for a commission to examine a witness otherwise unavailable.[200]

Although the rules provided that "[a]t all times whilst the Senate is sitting upon the trial of an Impeachment the doors of the Senate Chamber shall be kept open,"[201] the senators frequently deliberated in executive session. An addition to the 1811 rules stated:

> In all cases where motions are made by the parties or their counsel, after the parties shall be heard upon such motion, the Senate shall order the Court to be cleared, if one third of the members present shall require it, but all decisions shall be made in open Court, by ayes and noes, and without debate, except on motions of adjournment, where the determination may be made in private and announced by the President from the chair.[202]

This practice was followed throughout the period treated here. When discussion was desired on motions or objections to evidence, the court was cleared. Similarly, considerations of guilt and sentencing were private. The balloting, however, was always in public session and by roll call.

The Court heard frequent objections to proposed testimony and rejected evidence deemed unreliable. For example, objections to the admission of hearsay were sustained twice in the course of the Gibbes trial.[203] The senators permitted counsel for the defendant O'Driscoll to attack the credibility of a prosecution witness,[204] but

198. *Id.* Nov. 29, 1811.

199. *Id.*

200. *Id.* Nov. 30, 1814. *See also* text accompanying notes 172-73 *supra.*

201. S.C. SENATE J., Nov. 29, 1811.

202. *Id.* Dec. 4, 1811. This replaced an earlier rule that allowed the Senate to retire to an adjoining room for deliberation. *Id.* Nov. 30, 1811.

203. *Id.* Dec. 7, 10, 1811.

204. S.C. SENATE J., Dec. 15, 1814.

refused a question seemingly without proper foundation.[205]

An unusual aspect of the South Carolina impeachment procedures was the role of the solicitors. A 1791 statute authorized the legislature to appoint three solicitors and assigned a variety of tasks to these officers.[206] They acted as the state's attorney before the circuit courts, gave advice upon request to the governor and other state officials, and assisted the Attorney General. Moreover, the solicitors were directed "to attend the Legislature of this State, whenever they shall meet," and to prepare bills when so asked.[207] The Senate impeachment rules in effect during the years under investigation provided that "[t]he Solicitors shall be requested to attend in their robes in order to answer any legal questions which may be propounded to them."[208] Starting with the 1793 Moultrie trial, in which they were asked "their opinion as to the propriety and legality of the said question,"[209] the solicitors regularly appeared at impeachment proceedings and answered legal inquiries. Hence, in the Clark trial the solicitors advised the necessity of renewing the defendant's recognizance in order to compel his appearance at the 1812 legislative session.[210] During the O'Driscoll hearing the solicitors rendered an opinion about whether a proposed question was competent.[211] Although many questions posed in the course of the trials were resolved without reference to the solicitors, the Court always followed their opinion when it was given. The ready availability of legal counsel to guide the senators must have contributed to the judicial atmosphere of the impeachment proceedings.

Another conspicuous, but troublesome, feature of these early Carolina impeachments was the inordinate delay inherent in the system. The brief legislative sessions dictated a sluggish impeachment procedure that frustrated the interest of both society and the accused in a prompt determination of guilt. For example, the 1809 complaint against Gibbes resulted in an 1810 impeachment and a trial the following year. This two-year pattern was followed in the cases of Clark and O'Driscoll. One unhappy result of this leisurely pace was that Clark and O'Driscoll remained in office for some time despite conduct that subsequently caused their removal. Sheriff

205. *Id.*
206. 6 COOPER, STATUTES, *supra* note 10, at 271, 274-75.
207. *Id.*
208. S.C. SENATE J., Nov. 29, 1811.
209. *Id.* Dec. 10, 1793.
210. *Id.* Dec. 18, 19, 1811.
211. *Id.* Dec. 15, 1814.

Clark, for instance, mistreated his prisoner in September of 1809, but more than three years were required to obtain a verdict of guilty in December 1812. Hence, impeachment hardly was calculated to protect the public by a speedy removal of offenders.

The practice of postponing trial for a year following a vote of impeachment raised the additional problem of intervening elections. Both the Clark and O'Driscoll proceedings straddled election years.[212] In these cases the court of impeachment was organized by the outgoing Senate, and the trial was conducted before the new senators in the next session. Only half of the Senate stood for election in a given year, but both trials included a large number of new faces. As noted above, the newly elected senators took the special oath before sitting on any trial proceedings.[213] Further, the cases always were tried before a single set of senators. Nonetheless, the composition of the court could shift drastically between the preliminary stage and the introduction of evidence.

IV. Impeachment and the Democratic Impulse

Although each of the impeachments and attempted impeachments can be explained on its own terms, these events also must be considered against the background of emerging democratic currents in the Palmetto State. Under the Constitution of 1790 South Carolina remained largely an elitist society. Virtually every official, including the governor, lieutenant governor, and the judges, were elected by the General Assembly. Even such local officers as sheriffs, ordinaries, and clerks of court were named by the legislature. Many office-holders—judges, ordinaries, masters, clerks—were commissioned for good behavior and thus were beyond the effective control of the general public. The General Assembly, in turn, was overly representative of the conservative-minded low-country. Moreover, property qualifications restricted the suffrage for members of the legislature.[214] In short, the political structure of Carolina facilitated domination of the state by a clique and was sure to arouse keen resentment during the Jeffersonian period.[215]

This heightened concern for greater democratization of governmental institutions found persistent expression in grand jury pres-

212. E. Reynolds & J. Faunt, Biographical Directory of the Senate of the State of South Carolina, 1776-1964, at 33-35 (1964).

213. *See, e.g.*, S.C. Senate J., Nov. 29, 30, 1814.

214. C. Williamson, American Suffrage from Property to Democracy, 1760-1860, at 123, 132 (1960).

215. *See generally* J. Wolfe, Jeffersonian Democracy in South Carolina (1940).

entments. Grand jurors regularly complained about the undemocratic manner of selecting officeholders. As early as the 1790's grand jury presentments called for the popular election of district officers for a term of years and protested the practice of commissioning such officials for good behavior.[216] After 1800 a torrent of citizen petitions and jury presentments requested that terms of local office be limited to popular designation for a set period.[217] Specifically, the presentments often singled out judicial tenure for good behavior as an undesirable practice. For example, in 1811, with the Gibbes and Grimké matters pending, the grand jury of Union District declared:

> That the tenure by which our Judges at Law and Equity hold their offices is incompatible with the principles of republicanism as well as detrimental to the real interest of the citizens. We would rather some [fixed] period should terminate every branch of public authority and that the elective principle should circulate through the whole system of our state jurisprudence. Let all power in our State be held by our simple and common tenure.[218]

Similarly, the fall 1809 grand jury for Newberry District observed "that office for life are [sic] repuguant to the principles and incompatible with the happiness of Republic institutions."[219] Two years later the Fairfield grand jurors complained "that the Office of the Judges of the Superior Courts is not rotatory."[220]

This protest over the tenure of office began to bear fruit, and in piecemeal fashion the legislature moved to remedy the grievances. In 1808 the lawmakers authorized the popular election of sheriffs for a term of four years.[221] A more significant reform occurred in 1812 when the legislature provided that clerks of court, tax collectors, ordinaries, registers, solicitors, and masters and commissioners of equity should serve for a period of four years.[222] Although subsequently amended to exempt those in office when the act was

216. Presentments of the Grand Jury of Edgefield County (Oct. term 1794); Presentments of the Grand Jury of Newberry County (Oct. term 1797), Grand Jury Presentments, State Archives, *supra* note 16.

217. Presentments of the Grand Jury of Fairfield District (Oct. term 1811); Presentments of the Grand Jury of Pendleton District (Oct. term 1813); Presentments of the Grand Jury of Barnwell District (Nov. term 1815), Grand Jury Presentments, State Archives, *supra* note 16; A Petition from the Citizens of Chester District, General Assembly Petitions (1812), State Archives, *supra* note 16.

218. Presentments of the Grand Jury of Union District (Oct. term 1811), Grand Jury Presentments, State Archives, *supra* note 16.

219. Presentments of the Grand Jury of Newberry District (Fall term 1809), Grand Jury Presentments, State Archives, *supra* note 16.

220. Presentments of the Grand Jury of Fairfield District (Oct. term 1811), Grand Jury Presentments, State Archives, *supra* note 16.

221. 5 COOPER, STATUTES, *supra* note 10, at 569.

222. *Id.* at 674.

passed,[223] this measure satisfied a major part of the demand for limited tenure. In 1815 the General Assembly took the next step and provided for the popular election of clerks and ordinaries.[224] These developments parallel, and perhaps were hastened by, changes in Carolina's political climate. After years of controversy, an 1808 constitutional amendment reapportioned the legislature, transferring numerical control to the up-country.[225] Two years later another amendment established manhood suffrage for whites.[226]

Judges, however, were secured from the reformist impulse by virtue of the good behavior clause of the 1790 Constitution. In this context, impeachment may be seen as a manifestation of the resentment against long terms in office and as a clumsy vehicle to curtail lifetime judicial appointments. It should be stressed that both Grimké, and William Hasell Gibbes had been sitting judges since the end of the Revolution and had outlasted their contemporaries. Since, for whatever reason, they had grown very unpopular with segments of Carolina society, some effort to remove them was likely. Under the constitution, impeachment was the only available route. Lawrence M. Friedman has noted the inverse relationship between the elective principle and judicial impeachments.[227] Indeed, unlike South Carolina, many states in the antebellum years shifted to an elected judiciary for a term of years.[228]

The wave of impeachments also suggests that Carolinians, especially in the up-country, held ambiguous attitudes about the judiciary. A desire was evident to improve the administration of justice, with emphasis upon the criminal law. Grand jurors were quick to complain of the backlog of cases and of the failure of judges to attend scheduled court sittings or to complete the sessions docket.[229] For instance, in 1817 the grand jury for Union District complained about "the inattention of the judges of the Courts of Equity and Common Pleas of this State in the discharge of their duty in not

223. 6 *id.* at 30.

224. *Id.* at 11-13.

225. 1 *id.* at 193-95.

226. *Id.* at 195.

227. L. FRIEDMAN, A HISTORY OF AMERICAN LAW 325 (1973).

228. For a description of the movement to popular election of judges and the abandonment of tenure for good behavior, see E. HAYNES, THE SELECTION AND TENURE OF JUDGES 80-135 (1944); Selsam, *A History of Judicial Tenure in Pennsylvania*, 38 DICK. L. REV. 168 (1934).

229. Presentments of the Grand Jury of Abbeville District (Oct. term 1817), Grand Jury Presentments, State Archives, *supra* note 16. The Newberry District grand jurors noted in 1814 that no court had been conducted there for two terms. Presentments of the Grand Jury of Newberry District (Oct. term 1814), Grand Jury Presentments, State Archives, *supra* note 16.

attending the Courts throughout the State. . . ."[230] The same year saw the grand jurors of Abbeville District note with concern "the slender prospect of speedily disposing of the causes ready for trial."[231]

Nevertheless, at the same time, many Carolinians were suspicious of an active judiciary that could enforce the collection of debts and foreclose mortgages. Although further investigation is necessary, the evidence indicates a continuous undercurrent of discontent with the state judicial system. On occasion this feeling took violent form. A crowd of debtors disrupted the proceedings of the April 1785 Court of Common Pleas held at Camden before Judge Grimké.[232] In 1796 the circuit judge in Greenville had his trunk and money stolen while he was in court. Nor was this the only incident in the district. The correspondent who described the theft added:

> It seems that in this district the judges are no great favorites; for the grand jury of the district absolutely libelled the late chief justice to his face, by way of presentment, for missing his way so that he did not arrive 'til the second day of court. Judge Waties, as he was going to this court house one morning, was pelted with mud and cow dung; and the present judge is emptied completely.[233]

The Colleton District grand jurors called upon Judge Desaussure in 1808 to "suspend the proceedings of this Court, in all civil causes, until the meeting of the Legislature in June, as a continuation of the regular proceedings of the Courts of Justice, under the distressing effects of the present Embargo, in this momentous crisis, would prove ruinous to a large and respectable part of the District."[234] The judge replied that he had no authority to suspend court sittings and would be liable to impeachment if he complied with the request of the jurors.[235] Similarly, the ultimately successful effort to reduce the jurisdiction of Charleston's Court of Wardens over nonresidents of the city shows the degree of enmity toward an effective municipal

230. Presentments of the Grand Jury of Union District (Mar. term 1817), Grand Jury Presentments, State Archives, *supra* note 16.

231. Presentments of the Grand Jury of Abbeville District (Mar. term 1817), Grand Jury Presentments, State Archives, *supra* note 16.

232. Resolutions to the Governor Regarding the District Court at Camden, April 23, 1785; rough draft of a report on the disruption of proceedings of the Court of Common Pleas at Camden, May 18, 1785, Grimké Papers, South Carolina Historical Society.

233. Charleston City Gazette and Daily Advertiser, Nov. 26, 1796.

234. Miller's Weekly Messenger, May 7, 1808.

235. *Id.* The grand jury in Barnwell District urged the presiding judge in 1808 to recommend legislative suspension "of the law in all civil cases until the present situation of the country be removed." Presentments of the Grand Jury of Barnwell District (Mar. term 1808), Grand Jury Presentments, State Archives, *supra* note 16.

tribunal.[236] This attitude almost certainly contributed to Grimké's impeachment problems, for he was perceived as a stickler for legal technicalities and a harsh judge. In short, some of Grimké's unpopularity well may have stemmed from his impatience with sloppy practices and undue delays in the up-country districts.

Another factor contributed to the movement toward popular election and a term of years for officials. Legislative selection and impeachment of judicial and local officials was consuming a good deal of time in the short General Assembly sessions. One lawmaker impatiently observed in 1811, "Tomorrow the Senate are to take up in the impeachment against the Master in Equity—after that is over, we shall then get to work seriously."[237] Noting that "the ordinary business of the Senate has been interrupted and impeded by the impeachment of William H. Gibbes," the upper house adopted a resolution for evening meetings "in order to bring up the business so delayed."[238] Three years later a legislator complained:

> Our elections are going on pretty well; and until we get rid of them, little will be done in the House. —The number of elections that devolve on the Legislature is felt as a serious inconvenience. With the candidates for Ordinaries, Clerks of Court, etc. we are personally unacquainted, and therefore being compelled to depend on the recommendations of others, a door is opened for intrigue and corruption. This moreover establishes a habit of electioneering, destructive of independence and purity of conduct.[239]

By limiting the terms of office and instituting popular elections, the legislature created alternative means of removal for masters-in-equity (Gibbes), ordinaries and clerks of court (O'Driscoll), and sheriffs (Clark). The general electorate would have an opportunity to eliminate most unpopular officeholders, thus moderating the need for time-consuming impeachments.[240]

The outburst of impeachments from 1810 to 1814 indicates that Carolinians were in the process of determining the appropriate place for judicial officers in a republican society. The diverse currents of

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236. Ely, *Charleston's Court of Wardens, 1783-1800: A Post-Revolutionary Experiment in Municipal Justice*, 27 S.C.L. REV. 645 (1976).

237. Carolina Gazette, Dec. 7, 1811.

238. S.C. SENATE J., Dec. 16, 1811.

239. Charleston City Gazette and Commercial Daily Advertiser, Dec. 8, 1814.

240. The 1815 statute mandating popular election of clerks and ordinaries recited,

> Whereas, the time of the legislature, which might be otherwise occupied in discussing the interests of the State, is too much engrossed in holding elections for district and local officers, and their attention diverted from objects of greater to minor importance: and whereas the people are the better judges of the qualifications of the candidates their district officers.

6 COOPER, STATUTES, *supra* note 10, at 11.

Jeffersonian Democracy, opposition to tenure for "good behavior," and concern about a vigorous bench coalesced to create a favorable climate for judicial removal. Against these background developments, the conduct of certain unpopular or undesirable officials readily lent impetus to the impeachment movement. Since the nature and scope of impeachment proceedings were also uncertain, South Carolina was continuing its Revolutionary experiments with government by focusing on the unfinished business of judicial tenure.[241]

241. The South Carolina Constitution of 1868 changed the tenure of superior court judges from good behavior to a term of six years. E. HAYNES, THE SELECTION AND TENURE OF JUDGES 129 (1944).