

*Fortune's Orphan:*  
*The Troubled Career of Thomas Macnemara*  
*in Maryland, 1703-1719*

*by*  
*C. Ashley Ellefson*

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author or his proxy.

For  
Thomas Macnemara  
and  
all other outsiders  
who have suffered  
at the hands of  
lesser men

“The guilt of the accused may have been assumed rather too easily by  
later historians.”

May McKisick, *The Fourteenth Century, 1307-1399*  
(Oxford), p. 391.

“. . . the manipulation of justice was an essential part of political management. . . .”  
W. M. Ormrod, *Edward III* (Tempus), p. 68.

“It is far safer to know too little than too much.”  
Samuel Butler, *The Way of All Flesh* (Modern Library), p. 26.

“I didn’t go out of my way to look for trouble; troubles came to look for me. . . .”  
Alessandro Manzoni, *The Betrothed* (Penguin), p. 720.

“Men are created to torment one another.”  
Fyodor Dostoyevsky, *The Idiot* (Modern Library), p. 376.

“We all construct our history according to what we are willing to believe.”  
Decca Aitkenhead, “Killing is Thrilling for Soldiers Everywhere,” *Manchester Guardian Weekly*, 27 June 1999, p. 12.

“You’ll find out that pretty nearly everything you believe about life . . .  
is lies.”  
Willa Cather, *One of Ours* (Vintage), p. 130.

*Fortune's Orphan*  
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## *Introduction*

This essay on Thomas Macnemara began as an appendix to a manuscript I am writing on benefit of clergy in colonial Maryland. The more I found out about Macnemara's having to plead benefit of clergy in 1710 in the death of Thomas Graham, the clearer it became that the provincial justices were trying to railroad him to his grave,<sup>1</sup> and believing that it was important to find out more about him I decided to add an appendix in which I could say more about the case than I could say in the text. The appendix kept getting longer, however, and after dividing it into two parts and then four I decided to lay the manuscript on benefit of clergy aside and do one on Macnemara, since I would be able to finish it quickly and soon get back to benefit of clergy. That was sometime before 1990.

The more I found about Macnemara's career in Maryland from his arrival in 1703 until his death in 1719 the clearer it became that while he probably was the best lawyer in the province, and while he was respectable enough to become clerk of the lower house, naval officer of Patuxent, and procurator or proctor of office for Jacob Henderson, the ecclesiastical commissary of the Western Shore,<sup>2</sup> and popular enough with the voters and enough of the most prominent men of Annapolis to become a common-councilman, alderman, and then mayor of that city,<sup>3</sup> higher authority — Governor John Seymour and Governor John Hart, and between their administrations the council — were untiring in their determination that if they could not kill him they



would prosecute him constantly, deprive him of his practice, and thus force him out of the province.

Considering Macnemara along with Governor John Seymour and Governor John Hart and the members of the council, as well as Attorney General William Bladen, it soon became clear that Macnemara deserves far better treatment than historians have given him.<sup>4</sup> Accepting the charges of Macnemara's enemies as almost their only sources,<sup>5</sup> they have condemned him just as his enemies did. In *The Dulanys of Maryland* the late Aubrey C. Land provides a particularly brutal treatment of him, and probably most of the people who have heard of Macnemara at all have got their information from that book. Land calls Macnemara disorderly,<sup>6</sup> extravagant,<sup>7</sup> unpredictable,<sup>8</sup> intemperate,<sup>9</sup> "impetuous and unscrupulous,"<sup>10</sup> ruthless,<sup>11</sup> scurrilous,<sup>12</sup> incredible,<sup>13</sup> a troublemaker,<sup>14</sup> and an "insolent bully."<sup>15</sup>

More recently, Beatriz Betancourt Hardy's inadequately researched but exuberant endorsement of the allegations against Macnemara does nothing to balance Land's one-dimensional treatment of him.<sup>16</sup> Hardy says that Macnemara "richly merited" the opprobrium<sup>17</sup> that his "evil reputation"<sup>18</sup> brought him and that his "life is a testament to success without honor."<sup>19</sup> And when in her dissertation six years earlier Hardy calls Macnemara "a man with no conscience,"<sup>20</sup> refers to him as "an Irish Catholic lawyer," includes him among the Catholic gentry, and identifies his occupations as "lawyer; troublemaker"<sup>21</sup> she does nothing to clarify either his character or his career.

In a later dissertation Charles M. Flanagan accepts the allegation that Macnemara "made light of renouncing his religion for the sake of wealth and power,"<sup>22</sup> refers to what he calls Macnemara's "dubious personal character"<sup>23</sup> and says that the "disparity between his public virtues . . . and his public vices suggests that style

triumphed over constancy of virtue.”<sup>24</sup> Contrasting him with James Carroll’s “distinctive mixture of business skill, broadly based intellectualism, and religious passion,” he implies that Macnemara’s “love of social life and his enjoyment of comfort”<sup>25</sup> were more important to him than his work as an attorney.

Finally, Carl Bode calls Macnemara hot-headed,<sup>26</sup> outrageous,<sup>27</sup> “a black-hearted brawler,”<sup>28</sup> and “a greedy, insolent bully.”<sup>29</sup>

Apparently these writers have made no effort to place Macnemara in the context of his own time, but rather they have judged him on the basis of how people of the twentieth century were and of the twenty-first century are supposed to act — but seldom did or do.

None of this is to say that Thomas Macnemara was entirely blameless and that he had no part in creating his own problems. He *was* intemperate, and insolent, and daring and extravagant, and, though we have no real evidence of this, he might have drunk too much. But intemperance — and the insolence and daring and extravagance that goes along with it — and drunkenness were conventional vices of the eighteenth-century.

And if Macnemara was violent, so too were the planters who condemned him. If Macnemara beat his servants or his wife, those people in authority were responsible for plenty of beatings, too, though they might not have done the beating themselves. No doubt many of them, like William Byrd in Virginia,<sup>30</sup> did beat their servants and slaves themselves, but apparently most of them did the beatings by proxy, and surely the person who orders or allows beatings is no better than the person who does the beating.

If Macnemara was not one of the more admirable characters in the history of the world, he was not as bad as his reputation makes him appear. Whether he was

any more arrogant and violent than many others in the arrogant and violent early eighteenth-century Maryland, it appears likely that his greatest problem was simply that he was too independent for this groveling age, and historians who have uncritically accepted his enemies' libels of him, particularly in the letter from the council of Maryland to the Board of Trade of 18 July 1712,<sup>31</sup> have done a disservice not only to him but also to history.<sup>32</sup> It is not that Macnemara was so good, but rather that the men in authority were just as bad or, more likely, worse. Seeing Macnemara as a scurrilous, trouble-making bully with no conscience, a greedy brawler who was solely responsible for his own problems, has allowed historians to ignore the severity of the political divisions in the province and the self-aggrandizing malevolence of authority. But surely Macnemara's unscrupulous enemies — especially John Seymour, John Hart, and William Bladen — have something to answer for, too.

Probably nobody in early eighteenth-century Maryland haunted authority more than Thomas Macnemara,<sup>33</sup> and so far his enemies have defined his character. But a man long dead has nothing but his reputation, and as the creators and then the custodians of reputations historians owe their subjects as accurate treatments as the sources allow. Probably like most of the people who know about Macnemara first met him, as I did, in Land's book on the Dulanys, and of course I accepted Land's jaundiced view of him. It was not until I was working on the manuscript on benefit of clergy that I suspected that there was much more to Macnemara than I had realized.

Spending all of these years with Thomas Macnemara probably makes it inevitable that I would develop an image of him in my mind. Similarly, the people on whom I have imposed him have developed their own ideas. The man my bride

Beverly Ann sees is a powerfully built but not fat red-faced red-head. Our friend Frank Ray agrees: he sees a man who was “quite athletic and quite muscular, big enough and tough enough to worry people, but no giant.”

I am the odd man out. I have an image of a man taller than most of the people he dealt with, very slender and even skinny, a red-faced red-head with sharp features and a prominent nose.

Regardless of what Thomas Macnemara looked like, I have tried to present him as a real person rather than the caricature that past historians have made of him.

## *Introduction*

<sup>1</sup> For Thomas Macnemara's having to plead benefit of clergy in the death of Thomas Graham, see Chapter 5, "Railroading, 1710-1713," at Notes 1-93, 105-110, 113-115.

<sup>2</sup> The ecclesiastical commissaries, one to supervise the Anglican clergy on each side of the Chesapeake Bay, were the representatives of the Bishop of London in the province. These commissaries were not the same as the commissaries-general, of whom there might be one but were often two or three men holding the same office jointly, or the deputy commissaries, of whom there was one for each county. Edith E. MacQueen, "The Commissary in Colonial Maryland," *Maryland Historical Magazine*, XXV, No. 2 (June 1930), pp. 190, 195; Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), pp. 39-40, 40-41, 130-132.

While Edith E. MacQueen usually refers to this official as an "ecclesiastical commissary" (MacQueen, "The Commissary in Colonial Maryland," pp. 190, 192, 194, 197, 198), she also calls these commissaries bishops' commissaries. *Ibid.*, p. 192. She refers to the office of the commissary-general as the "judicial office of commissary." *Ibid.*, p. 198.

For the ecclesiastical commissary, see also Nelson Waite Rightmyer, *Maryland's Established Church* (Baltimore: The Church Historical Society, 1956),

pp. 37-48, 55, 63-72, 77-81, 83-84; Carol van Voorst, *The Anglican Clergy in Maryland, 1692-1776* (New York: Garland Publishing, Inc., 1989), pp. 26-59; Chapter 8, "Procurator of Office, 1717-1719," at Notes 3, 8.

Robert Beverley mentions the ecclesiastical commissary in Virginia. Robert Beverley, *The History and Present State of Virginia*, ed. David Freeman Hawke (New York: The Bobbs-Merrill Company, Inc., 1971), p. 124.

The procurator or proctor of office was the legal representative of the ecclesiastical commissary in religious matters. For the procurator or proctor of office as an attorney, see Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 1207, under both "procurator" and "proctor."

<sup>3</sup> For Thomas Macnemara's offices in Maryland, see Chapter 7, "Respectability, 1713-1719," and Chapter 8, "Procurator of Office."

<sup>4</sup> Very little work has been done on either Thomas Macnemara or William Bladen. Except for Beatriz Betancourt Hardy's extravagant "'A most Turbulent and Seditious person': Thomas Macnemara of Maryland," *Maryland Humanities*, Issue Number 72 (January 1999), pp. 8-11, what has been done consists of brief mentions in studies on other subjects. I am trying here to fill the vacuum in the case of Macnemara, and I hope that my manuscript on Bladen will also be useful. It is available at <http://www.aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000747/html/index.html>.

<sup>5</sup> Letter from the Council of Maryland to the Board of Trade, 18 July 1712, in The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127 (photocopy in Library of Congress), and The National Archives (PRO), *Calendar of State*

*Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd. 1964) XXVII, No. 16; Letter from provincial justices to Board of Trade, 18 July 1712, in TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128, and TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i; Letter from Maryland from unknown writer, dated 13 August 1710, in TNA (PRO), Colonial Office 5, Vol. 720, No. 8(ii), and TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(a); Letter from Maryland apparently from the same unknown writer, dated 4 April 1711, in TNA (PRO), Colonial Office 5, Vol. 720, also No. 8(ii), and TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(b).

I thank Michael J. Klein, former Manuscript Reference Librarian at the Library of Congress, and Jeffrey M. Flannery, current Manuscript Reference Librarian there, for providing me with information from the photocopies of the Colonial Office Papers.

<sup>6</sup> Aubrey C. Land, *The Dulanys of Maryland: A Biographical Study of Daniel Dulany, the Elder (1685-1753) and Daniel Dulany the Younger (1722-1797)* (Baltimore: Maryland Historical Society, 1955; reprinted Baltimore: The Johns Hopkins Press, 1968), p. 41.

<sup>7</sup> *Ibid.*, p. 34.

<sup>8</sup> *Ibid.*, p. 28.

<sup>9</sup> *Ibid.*, p. 34.

<sup>10</sup> *Ibid.*, pp. 7-8.

<sup>11</sup> *Ibid.*, p. 15.

<sup>12</sup> *Ibid.*, p. 16.

<sup>13</sup> *Ibid.*, pp. 17, 210.

<sup>14</sup> *Ibid.*, p. 54.

<sup>15</sup> *Ibid.*, p. 16. On page 17 Land calls Macnemara insolent again.

<sup>16</sup> Beatriz Betancourt Hardy, “‘A most Turbulent and Seditious person’: Thomas Macnemara of Maryland,” *Maryland Humanities*, Issue Number 72 (January 1999), pp. 8-11.

<sup>17</sup> *Ibid.*, p. 8, col. 1.

<sup>18</sup> *Ibid.*, p. 11, col. 3.

<sup>19</sup> *Ibid.* p. 8, col. 1.

<sup>20</sup> Beatriz Betancourt Hardy, “Papists in a Protestant Age: The Catholic Gentry and Community in Colonial Maryland, 1689-1776,” (Ph. D. dissertation: University of Maryland, 1993), p. 155.

<sup>21</sup> *Ibid.*, pp. 155, 492-493.

<sup>22</sup> Charles M. Flanagan, “The Sweets of Independence: A Reading of the ‘James Carroll Daybook, 1714-21,’” (Ph. D. dissertation: University of Maryland, 2005), p. 143. Here Flanagan cites Land, *The Dulanys of Maryland*, p. 18, but on that page there is no mention of Macnemara.

<sup>23</sup> *Ibid.*, p. 152.

<sup>24</sup> *Ibid.*, pp. 152-153.

<sup>25</sup> *Ibid.*, p. 143. Flanagan says that in 1712 “the Maryland Assembly had ordered . . . [Macnemara] to provide separate living accommodations for his wife (*ibid.*, pp. 148-149), but it was actually the chancery court that made that award, and the date was not 1712 but rather the conflict lasted from sometime before 19 August 1707 to 2 March 1707/8. Chancery Record 2, pp. 579-581, 583-585.

<sup>26</sup> Carl Bode, *Maryland: A Bicentennial History* (New York: W. W. Norton & Company, Inc., 1978), p.18.

<sup>27</sup> *Ibid.*, p. 12.



<sup>28</sup> *Ibid.*, p. 7.

<sup>29</sup> *Ibid.*, p. 18.

<sup>30</sup> William Byrd, *The Secret Diary of William Byrd of Westover, 1709-1712*, ed. Louis B. Wright and Marion Tinling (Richmond: The Dietz Press, 1941), pp. 79, 84, 221, 240, 241, 316, 341, 384, 419, 495, 511, 514, 540, 573, 585. See also Chapter 16, “A Man Ahead of His Time,” at Note 31.

<sup>31</sup> See Note 5 above.

<sup>32</sup> Especially Land, *The Dulanys of Maryland*, pp. 7-8, 8, 15, 15-16, 16, 17, 34, 35, 54, 210, and Hardy, “‘A most Turbulent and Seditious person’: Thomas Macne-mara of Maryland,” pp. 8-11, but also Bode, *Maryland: A Bicentennial History*, pp. 7, 16, 17-18; Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), pp. 50, 130, 132, 515; Hardy, “Papists in a Protestant Age,” pp. 155-157; John E. Douglass, “Between Pettifoggers and Professionals: Pleaders and Practitioners and the Beginnings of the Legal Profession in Maryland, 1634-1731,” *The American Journal of Legal History*, XXXIX, No. 3 (July 1995), pp. 376-380; and Flanagan, “The Sweets of Independence,” pp. 143, 152, 152-153.

<sup>33</sup> Probably not even Richard Clarke, whom authority was able to hang on a bill of attainder in 1708 and for whom see Chapter 1, “Character,” at Note 31, and Chapter 3, “Early Troubles, 1703-1710,” at Notes 55-66, 72-76.

## *Chapter 1*

### *Character*

Probably nobody in Maryland during the first two decades of the eighteenth century caused the recently emerging ruling class of the province<sup>1</sup> more distress than Thomas Macnemara did.<sup>2</sup> Even Richard Clarke, the alleged pirate and counterfeiter, authority could hang, guilty or not, and be done with him.<sup>3</sup> In its one effort to hang Macnemara in 1710, however, it failed,<sup>4</sup> and he hung around for another nine years to continue to provide Marylanders with graphic lessons in the ruthlessness of the ruling class, the malevolence of its officials, the incompetence of lawyers, the dishonesty of justices, and, with all of that, the dangers of challenging the powerful.<sup>5</sup>

Macnemara, who arrived in Maryland from Ireland apparently in the spring of 1703 as a redemptioner who bound himself to Charles Carroll the Settler, the most prominent Catholic in the province,<sup>6</sup> had the misfortune of living in the colony under two thoroughly nasty governors. John Seymour arrived in Maryland on 12 April 1704, probably about a year after Macnemara did, and died in office on 30 July 1709.<sup>7</sup> John Hart arrived in Maryland on 29 May 1714 and left for England in May of 1720,<sup>8</sup> eight or nine months after Macnemara died. From Seymour's death until Hart's arrival the province was under the control of the council, with Edward Lloyd sitting as president,<sup>9</sup> and Lloyd and the rest of the council were as unscrupulous in

their determination to destroy Macnemara as Seymour and Hart were.<sup>10</sup>

Almost from the day of his arrival in the colony until he died sometime between 11 August and 8 September 1719,<sup>11</sup> Macnemara was in trouble. In spite of the complaints of his enemies about his alleged violence and lawlessness,<sup>12</sup> however, it appears that his problems might have resulted not so much from any crimes or misdemeanors that he actually committed as from the fear of authority that his challenges to the disorderly legal practices in the province might weaken the power and therefore the position of the ruling class, that he might become a charismatic leader of the Catholics, and that his occasional support of the underdog might become an epidemic that would threaten the entire economic, social, and political structure of the province.

There are at least four obvious reasons why the authority of eighteenth-century Maryland would not trust Macnemara. In the first place, he had been a Catholic, and his enemies insisted that secretly he was one still.<sup>13</sup> No doubt when at a special court of oyer and terminer in Annapolis on 10 July 1716 he defended the Catholics who were being tried for firing the guns of Annapolis on 10 June, the Pretender's birth-night,<sup>14</sup> for allegedly drinking the Pretender's health, and for allegedly cursing King George<sup>15</sup> the Protestants were only confirmed in their suspicions.

If the Catholics were as dangerous as authority made them appear it could not willingly tolerate the presence of a lawyer who was willing to defend them. If it could not hang him or get him out of the province, it could at least disbar him<sup>16</sup> and thus deny Catholics and other dangerous people his talents as an attorney.

Macnemara's apparent support of the Catholics was all the more frightening to the Protestants because the first two decades of the eighteenth century were a time

of great change in the province. From 1704 to 1719 the white population rose from 30,537 to 55,000, while the number of blacks increased from 4,475 to 25,000. Thus the black population increased by 458%, while the white population increased by only eighty percent, and many of those were either convict servants, Scottish rebels from 1715, or Irish Catholics.<sup>17</sup> Still in Maryland in 1708 there were only 2974 Catholics<sup>18</sup> out of a total population of probably forty to forty-two thousand people.<sup>19</sup>

To the Protestants that was too many, and ever since the Protestant Revolution of 1689 the position of the Catholics in Maryland had been precarious. They were excluded from holding office because they could not take the oaths of allegiance and abhorrence and subscribe to the Test,<sup>20</sup> and, after the spring of 1701/2, take and subscribe to the oath of abjuration.<sup>21</sup> In May of 1704 the assembly wrote the oath of abjuration into the laws of the province.<sup>22</sup>

After three abortive attempts to establish the Anglican Church in Maryland,<sup>23</sup> the assembly in 1702 finally succeeded by passing an act that had been written in England.<sup>24</sup> Now the Anglican Church would be supported through a tax of forty pounds of tobacco per year on every taxable in the province.<sup>25</sup>

Convincing themselves that the tiny number of Catholics in the province were trying to take it over and would impose Catholicism on it if they could — and might even combine with the Indians to slaughter the Protestants<sup>26</sup> —, the Protestants tried to reduce the rate of expansion of the Catholic population. In 1699 the assembly levied a tax of twenty shillings sterling on every Irish servant imported into the province, and while it levied the same tax on every imported Negro it made it clear that its object in taxing the Irish was not only to raise money but also “to prevent too Great a number of Irish Papists being Imported” into the province.<sup>27</sup> The assembly continued that tax until 1716,<sup>28</sup> when exactly two months after the firing of the guns

of Annapolis Hart signed a bill establishing a duty of four pounds current money on imported Irish servants in addition to the duty of one pound sterling already being collected, “to prevent the Importing two [*sic*] great a Number of Irish papists,” and an additional duty of the same amount on imported Negroes, “for raising a Supply Towards Defraying the publick Charge” of the province.<sup>29</sup> After Charles Calvert, the fifth Lord Baltimore, and his guardian, Francis North, the second Lord Guilford,<sup>30</sup> disallowed that law and pointed out that it applied to all Irish, whether Protestant or Catholic,<sup>31</sup> the assembly immediately — at its session of 28 May to 8 June 1717 — added a duty of twenty shillings current money on all imported Negroes and all imported Irish servants, “being Papists,” to the duty of twenty shillings sterling already established.<sup>32</sup>

It was not enough, however, to discourage the immigration of Catholics into the province. It was equally necessary to limit the practice of Catholicism by those who were already there so that they would not make converts and might even leave the province themselves. In October of 1704 the assembly prohibited the practice of Catholicism in the province except for allowing priests to baptize the children of Catholic parents,<sup>33</sup> but with less severe punishment for the practicing priest than the English law provided.<sup>34</sup> By this act the assembly also made it illegal for any Catholic to keep a school or otherwise educate young people in the province or for any Catholic parent to try to force his Protestant child to become a Catholic by refusing him appropriate maintenance.<sup>35</sup>

After the Catholics petitioned for the suspension of the law prohibiting the practice of Catholicism until the queen’s pleasure was known,<sup>36</sup> in December of 1704 the assembly amended the law to allow priests to function in private families for eighteen months or until the queen’s pleasure was known, whichever came first.<sup>37</sup>

After two more petitions of the Catholics<sup>38</sup> the assembly in 1706 extended that concession, this time however for only twelve months or until her Majesty's pleasure was known, whichever came first.<sup>39</sup>

As a result of an order from the queen dated 3 January 1705/6 the assembly in 1707 provided that priests could function in private families until her pleasure was known but with no limitation of time.<sup>40</sup> That lasted only until 1712, however, when the authorities of the province were supposed to begin enforcing the queen's proclamation of the previous year by which she ordered enforcement of the laws against the Catholics.<sup>41</sup> The act of 1704 permitting priests to baptize the children of Catholic parents and the act of 1707 permitting Catholics to hold religious services in private families remained unrepealed, however, and according the assembly in a message to Baltimore and Guilford on 10 May 1718 Catholics had still been allowed to hold religious services not only in private families but even in public.<sup>42</sup>

In June of 1715 the assembly again wrote the oath of abjuration into the laws of the province.<sup>43</sup> At that same session the members of the assembly revealed their deep feeling of humanity by ruling that the governor and his council on the application of any person could remove the children of any widow of a Protestant who married a Catholic or who was herself a Catholic out of her custody or that of her and her new Catholic husband "and place them where they . . . [would] be Securely Educated in the protestant religion." Out of "the Estate or Estates belonging to such Child or Children" they could also "order such reasonable Maintainance for such Child or Children soe removed."<sup>44</sup> Thus if a Protestant widow of a Protestant had children she had better not marry a Catholic, and if a Catholic wife of a Protestant had children she had better die first, so that her children could at least remain with one of their parents, or, if she became a widow, marry another Protestant

at the earliest opportunity.

We do not know how many children were removed from the widow of a Protestant who married a Catholic, or from the Catholic widow of a Protestant, but the threat was there for the remainder of the colonial period.<sup>45</sup>

In 1716 the assembly confirmed the Catholics' exclusion from office. After John Hart's quarrel with Charles Carroll about what oaths officials were required to take,<sup>46</sup> the assembly provided that all officials in the province would have to take the oaths of allegiance, supremacy, and abjuration and subscribe the oath of abjuration and the Test.<sup>47</sup> In 1718 it completed the repression of the Catholics by denying them the right to vote and by repealing the act to prevent the growth of Popery of 1704 and thus restoring the harsher English law against Catholics.

First the assembly denied Catholics the right to vote. A special election was coming up in Annapolis to choose a delegate to replace Benjamin Tasker, who since the end of the previous session had become sheriff of Anne Arundel County<sup>48</sup> and therefore could not serve in the lower house.<sup>49</sup> Since the Catholics were taking the same dangerous interest in this election as they had in the election two years earlier,<sup>50</sup> the assembly had to act fast. Not only did it rush through an act by which it provided that a person could vote only after he took the oaths of allegiance, supremacy, and abjuration and subscribed to the oath of abjuration and the Test,<sup>51</sup> but Hart signed it immediately after its final passage rather than waiting to sign it with the rest of the acts at the end of the session, as was the usual practice.<sup>52</sup> The entire process, from the introduction of the bill to Hart's signature, took only about twenty-four hours,<sup>53</sup> and Annapolis could proceed with its election.

Having met the emergency, the assembly could now destroy the Catholics' last remaining religious rights in the province. It repealed the act to prevent the growth

of Popery of 1704, by which Catholic priests could baptize the children of Catholic parents.<sup>54</sup> That made the amending act of 1707, which replaced the act of 1704 by which Catholic priests could conduct services in private families,<sup>55</sup> irrelevant, and priests would no longer be able to baptize the children of Catholic parents or to conduct services, even in private families, without risking imprisonment for life.<sup>56</sup>

The second reason for Macnemara's troubles is that in spite of his enemies' belief that he was misleading them about his religion he had the courage of his convictions. While he appears not always to have been a model of probity,<sup>57</sup> he was honest enough to say what he thought. When he was convinced that he was right he refused to back down simply to ingratiate himself with people in power. According to the members of the upper house, in the chancery court sometime in 1717 he told Governor John Hart "to his face" that while he was in England<sup>58</sup> he had tried to get Hart fired.<sup>59</sup> When in the chancery court on 10 October 1717 Hart denied that he had called Macnemara a "Rogue and a Rascal," Macnemara refused to agree that he had not.<sup>60</sup> When in the chancery court on 24 February 1717/18 Hart insisted that Macnemara had apologized to him for saying something that offended Hart, Macnemara denied it.<sup>61</sup> Hart, insisting that everybody agree with him absolutely, interpreted Macnemara's denials as accusations that he — Hart — was a liar.<sup>62</sup>

In a society that insisted on obsequious submission to authority, Macnemara's independence and courage made him not only obnoxious but also dangerous.

The third cause of Macnemara's troubles is that, as his willingness to defend Catholics in court makes clear, he sometimes sympathized with the underdog. That made him a threat to the entire economic, social, and political structure that depended



on the exploitation of the great many for the benefit of the very few.

In a gesture that must have been almost unheard of in colonial Maryland Macnemara on one occasion was generous enough to waive his fee for representing a client.<sup>63</sup> When at the Anne Arundel County court for June of 1705 Amos Garrett sued Susanna Davis, the administratrix of Nathaniel Davis, in an action of trespass on the case for £5.1.9 sterling that Nathaniel Davis had owed him on an account, Macnemara argued that Susanna Davis had “well and truly Administred all and singular the goods and Chattells rights and Creditts” that Nathaniel Davis had at the time of his death and that therefore neither at the time Garrett sued out his writ “Nor at Any time since” did she have any of Davis’s goods or chattels still “In her hands to be Administred.”

After Garrett’s attorney, William Taylard, responded that Susanna Davis had not denied “the Damages” and asked for judgment and costs out of any goods and chattels that Nathaniel Davis had “at the time of his death and which to the hands of” Susanna Davis “hereafter . . . [might] Come to be Administred,” the justices awarded Garrett the £5.1.9 sterling “Damages” and 422 pounds of tobacco for his costs out of any such goods. The clerk noted that Macnemara was representing Susanna Davis for nothing.<sup>64</sup>

Macnemara also helped two freed servants recover their freedom dues and one servant gain his freedom. At the Anne Arundel County court for November of 1706 he appeared for Francis Harrison, who complained that Samuel Dorsey had not paid him his freedom dues after he completed “his full time of servitude.”<sup>65</sup> The justices summoned Dorsey to appear immediately to show cause why he should not pay that freedom dues, and when Dorsey admitted that what Harrison said was true they ordered him to pay the freedom dues as well as the costs of Harrison’s complaint.<sup>66</sup>

At the Anne Arundel County court for August of 1707 Macnemara appeared for Thomas Bayly, who was trying to recover his freedom dues from Thomas Brown. Again Macnemara succeeded: the justices ruled that Brown should pay Bayly his freedom dues.<sup>67</sup>

Ten years later Macnemara helped Thomas Williamson gain his freedom. At the Baltimore County court for August of 1717 he asked the justices to free Williamson from Andrew Berrey's service because Williamson had already served Berrey for a longer time than "he was Adjudged." After hearing the evidence of James Maxwell, the chief justice of the court,<sup>68</sup> and Thomas Barnes for Williamson and Richard Smithers for Berrey the justices freed Williamson and ordered Berrey to pay Williamson's charges on the petition.<sup>69</sup>

When in June of 1705 Macnemara defended Susanna Davis for nothing he had been in Maryland for only a little more than two years and had been practicing law there for only about fifteen months,<sup>70</sup> and thus very early in his career in the province the ruling elite must have got some clues about his values.<sup>71</sup> His support of the unfortunate could hardly have improved his reputation with authority, especially since he had already been in trouble himself. In May of 1704 he was acquitted of biting off Matthew Beard's ear,<sup>72</sup> and by August of 1704 he had been accused of an unexplained breach of the peace, though this alleged offence was never prosecuted.<sup>73</sup> For the rest of his life authority would continue to harass him.<sup>74</sup>

Whatever virtues Macnemara might have possessed, however, he was not immune to the culture of his time. While he was willing to help the poor and the servants of others, he might have had no such concern for servants of his own. Ten months before he helped Francis Harrison receive his freedom dues and nineteen

months before he helped Thomas Bayly, Macnemara appeared at the Anne Arundel County court for January of 1705/6 under a recognizance taken before Amos Garrett, one of the quorum justices of Anne Arundel County,<sup>75</sup> on Margaret Deale's complaint that he had abused her in ways that the record does not specify. The justices showed little sympathy for her: they simply advised Macnemara "to be more mild for the future" and ordered Margaret Deale "to go home . . . [about] her Masters business and be Obedient to his lawfull commands."<sup>76</sup>

Whether or not Macnemara treated Margaret Deale more harshly than he should have, apparently he tried to keep Manus Knark in servitude when he had no right to his service. At the same court at which Margaret Deale complained about Macnemara's treatment of her — January of 1705/6 —, Knark petitioned the justices of Anne Arundel County to free him from Macnemara's service. The justices decided that since Knark had not bound himself to Macnemara by any indenture or otherwise that could "be made appeare to the Court he be free and at liberty."<sup>77</sup>

It is similarly impossible to know the relationship between Macnemara and John Edwards, though Macnemara might simply have discarded a worn-out servant or tenant who was no longer useful to him. At the Anne Arundel County court for August of 1711 Edwards petitioned the justices that since he was "Ancient and surcumvented out of the Estate" of Thomas Macnemara and was "left without any place of Residence" the justices "order him a place of Residence and Maintenance tell [*sic*] he Could be sent to his Native Country with sume [*sic*] Necessarys for Cloathing." The justices ordered that the sheriff, John Gresham Jr., allow Edwards four hundred pounds of tobacco out of the tobacco in his hands for his maintenance until the November court.<sup>78</sup>

What happened in November does not appear,<sup>79</sup> but in August of 1713 Edwards

petitioned the justices “to agree with some Capt of a ship for his Passage to England,” which, he suggested, would be cheaper than “his pention Keepen him” in the province. Thus it appears that the county had been supporting Edwards for two years. The justices agreed to arrange for his passage to England as long as it did not cost more than twelve hundred pounds of tobacco and ruled that any justice could arrange and pay for the passage and be reimbursed out of the county levy.<sup>80</sup>

If Macnemara could discard John Edwards when he was no longer of any use, he held on as long as he could to the servant who was able to work. When in June of 1716 he brought Robert Morelen before the Baltimore County court and complained that Morelen had absented himself for sixteen days, the justices ordered that Morelen serve him for an additional ten days for every day he was gone, which was the maximum penalty.<sup>81</sup> But that was not all. After Macnemara also told the justices that he had been at great expense in apprehending Morelen twice in Pennsylvania and bringing him back to Maryland the justices ordered that Morelen serve Macnemara for two additional years to reimburse him for those costs.<sup>82</sup> Thus Morelen had to serve Macnemara not quite an additional two-and-a-half years for being gone for only sixteen days.<sup>83</sup>

Clearly Macnemara was not *always* on the side of the underdog, and as an attorney he could serve as counsel for the vicious Notley Rozier. After the grand jurors at the Prince George’s County court for March of 1706 presented Rozier for “Tying and Whipping” William Taylor or Tyler,<sup>84</sup> the grand jurors at the provincial court for May of 1706 charged that on 6 March 1705/6 Rozier, who was a gentleman from Prince George’s County, tied the hands of William Tyler, a carpenter who might have been Rozier’s servant, to a sapling tree and his feet to the root of the

sapling tree and beat him with a cane. Then, the grand jurors continued, he “also did Cause a certaine Negroe slave Comonly called John Notley” to whip Tyler “most inhumanely” on his bare back with “Diverse Hickory switches.”

After the justices “by favour of the Court” admitted Macnemara as Rozier’s attorney Rozier pleaded not guilty and asked for an immediate trial. The petit jury found him guilty, and the justices fined him one thousand pounds of tobacco and required him to give security of twenty pounds sterling to guarantee his appearance at the provincial court “whensoever or wheresoever to be holden” and to be of good behavior in the meantime. Clement Hill and Macnemara, two gentlemen, became his sureties of ten pounds sterling each, but what happened after that has not appeared.<sup>85</sup>

Macnemara could also be instrumental in making a mulatto who thought that he was only a servant to age thirty-one a slave for life. In a petition to the Charles County court for June of 1713 Mulatto Lewis Mingo pointed out that even though his mother was a white woman and he was more than thirty-one years old Henry Wharton still held him as a slave, and he asked the justices to relieve him. The justices ordered Thomas Dent, the sheriff of Charles County, to summon Wharton to the August court to respond to the petition.

In August Daniel Dulany appeared for Mingo and asked that Wharton respond to the petition. Richard Llewelin, appearing for Wharton, stated simply that even though Mingo’s mother was a white woman and even though he had arrived at the age of thirty-one he should not be manumitted. The judges decided, however, that Mingo should be free.

Wharton appealed to the provincial court and gave security of forty pounds sterling to guarantee that he would prosecute his appeal. Thomas Jamson, a gentleman from Charles County, became his surety of twenty pounds sterling.<sup>86</sup> At the

provincial court for October of 1713 Macnemara appeared for Wharton and argued that the justices of Charles County had erred because according to the law in force when Mingo was born he was still a slave, since at the time of his birth his mother and father were “lawfully Married according to the Rights [*sic*] and Ceremonies of the Church of England.”

For Mingo, Thomas Bordley and Daniel Dulany then argued that the justices of Charles County had not erred, and all of the attorneys agreed that the provincial justices should examine the record and proceedings as well as Macnemara’s claim. Since the justices were not advised of their judgment they continued the case to the next court, and in April of 1714 they reversed the judgment of the Charles County court and ruled that Mingo would be a slave for life.<sup>87</sup>

The confusion over whether Mulatto Lewis Mingo should be a slave or free might have resulted from the changes in the legal status of mulattoes during the past fifty years. In 1664 the assembly provided that any freeborn white woman who married a slave would be a slave during the life of her husband and that any children of such a marriage would be slaves for life.<sup>88</sup> Because some planters, apparently in order to produce additional slaves for themselves, were encouraging their female servants to marry slaves or to have children by slaves without the benefit of marriage, in 1681 the assembly provided that any freeborn white woman who married a slave, as well as any children of the marriage, would be free.<sup>89</sup>

That law too proved unsatisfactory. Female servants might connive to marry slaves in order to escape servitude, and in 1692, therefore, the assembly compromised by providing servitude instead of either slavery or freedom for the servant and her children in such cases. Any freeborn white woman who married either a slave or a free Negro would become a servant for seven years, the free Negro

would become a slave for life, and any child born of the marriage would become a servant to age twenty-one. If a white woman bore a bastard child whose father was a Negro she would similarly become a servant for seven years, and the mulatto bastard would become a servant to age thirty-one. If the father was a free Negro he would also become a servant for seven years.

If the woman in either of these cases was already a servant she would serve additional time to reimburse her master for his damages in the birth of the child, provided that he had not connived in her marriage or pregnancy, as well as the additional term of seven years after the expiration of her present servitude. White men would be subject to the same penalties for marrying or begetting children on Negro women.

Any master or mistress who encouraged such a marriage would lose the service of the servant and pay a fine of ten thousand pounds of tobacco, and anyone who performed such a marriage would pay a similar fine.<sup>90</sup>

Thus the provincial justices must have concluded that Mulatto Lewis Mingo was born in 1681 or earlier, while the act of 1664 was still in effect.

Clearly it would be a mistake to suppose that Thomas Macnemara was some sort of twentieth-first-century liberal. Even if we assume the worst about Macnemara's treatment of Margaret Deale, Manus Knark, and John Edwards, however, and even though he did support Notley Rozier against the battered William Tyler and helped to doom Mulatto Lewis Mingo to slavery for life, he does appear to have had an occasional pang of compassion, and he did help *some* of the unfortunate against those who were more powerful than they were. That alone was enough to make him exceptional in this violent and ruthless age, and combined with his alleged sympathy for the Catholics, his courage, and his skill as an attorney it made him dangerous.

## *Chapter 1*

### *Character*

<sup>1</sup> Historians have written about the ruling class in colonial Maryland, but they seldom use that term. They prefer such terms as “oligarchy,” “ruling group,” “entrenched elite,” “governing elite,” “gentry-dominated,” “Protestant elite,” and such other terms that are not so explosive as “ruling class.” David W. Jordan, “Political Stability and the Emergence of a Native Elite in Maryland,” in Thad W. Tate and David L. Ammerman, eds., *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society* (Chapel Hill: The University of North Carolina Press, 1979), pp. 265-273; David W. Jordan, “Elections and Voting in Early Colonial Maryland,” *Maryland Historical Magazine*, LXXVII, No 3 (Fall 1982), p. 258; David W. Jordan, “Sir Thomas Lawrence, Secretary of Maryland: A Royal Placeman’s Fortunes in America,” *ibid.*, LXXVI, No. 1 (March 1981), p. 33; David W. Jordan, *Foundations of Representative Government in Maryland, 1632-1715* (New York: Cambridge University Press, 1987), pp. 147-157, 158, 181, 208, 226, 230, 235; Lois Green Carr, Russell R. Menard, and Lorena S. Walsh, *Robert Cole’s World: Agriculture and Society in Early Maryland* (Chapel Hill: The University of North Carolina Press, 1991), pp. 9, 10, 12, 14, 162, 164, 166; Russell R. Menard, “Maryland’s ‘Time of Troubles’: Sources of Political Disorder in Early St. Mary’s,” *Maryland Historical Magazine*, LXXVI, No. 2, (June 1981), pp. 124, 134, 135, 137, 138.

Lois Carr places the development of a ruling class in colonial Maryland very



late. Writing of the middle of the eighteenth century, she says that “A ruling class, conscious of its role, was coming into being.” Lois Green Carr, “The Foundations of Social Order: Local Government in Colonial Maryland,” in Bruce C. Daniels, ed., *Town and County: Essays on the Structure of Local Government in the American Colonies* (Middletown, Conn.: Wesleyan University Press, 1978), p. 98.

Ronald Hoffman agrees that there was a “ruling class” by the time of the American Revolution (Ronald Hoffman, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500-1782* (Chapel Hill: University of North Carolina Press, 2000), p. 320), but he prefers “propertied elite.” *Ibid.*, pp. 315, 316, 329. He can also refer to “the propertied classes’ hold over society.” *Ibid.*, p. 333.

<sup>2</sup> Historians generally have been unfair to Thomas Macnemara, primarily because they have uncritically accepted his enemies’ view of him without doing any checking. See Council of Maryland to Board of Trade, 18 July 1712, The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127 (photocopy in Library of Congress); The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), No. 16; Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i.

<sup>3</sup> For Richard Clarke, see *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXV, 240, and indexes to XXV, XXVI, and XXVII; 1705, c. 5, *Md. Arch.*, XXVI, 513-514; 1707, c. 1, *Md. Arch.*, XXVII, 139-140; John Seymour to Council of Trade and Plantations, 23 June 1708, TNA (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXIII, No. 1570; TNA (PRO), Colonial Office 5, Vol. 727, p. 89 (photocopy in Library of Congress); John Seymour to Principal Secretary of State, 23 June 1708, in “Unpublished Provincial Records,” *Maryland Historical Magazine*, XVI, No. 4 (December 1921), pp. 357-358; Provincial Court Judgment

Record, Liber T. L., No. 1, pp. 576-577; Liber T. L., No. 3, pp. 266, 268, 274-275, 429; Anne Arundel County Court Judgment Record, Liber G, pp. 252, 284-285; Chapter 3, "Early Troubles, 1703-1710," at Notes 55-66, 72-76.

<sup>4</sup> At the provincial court for July of 1710 the justices tried three times to get the petit jury to find Macnemara and John Mitchell guilty of murder in the death of Thomas Graham on 8 May 1710, but the jurors refused to find them guilty of anything more serious than chance-medley. The justices themselves illegally raised Macnemara's crime to manslaughter. Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231-234, 398-400; Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16; Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i; Chapter 5, "Railroading, 1710-1713," at Notes 1-93, 105-110, 113-115.

<sup>5</sup> The appropriateness of this description will become apparent throughout the manuscript.

<sup>6</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127. On Charles Carroll the Settler, see Ronald Hoffman, "'Marylando-Hibernus': Charles Carroll the Settler, 1660-1720," *The William and Maryland Quarterly*, Third Series, XLV, No. 2 (April 1988); Hoffman, *Princes of Ireland, Planters of Maryland*, Chapter 2.

Aubrey C. Land says that Macnemara came from County Clare (Aubrey C. Land, *The Dulanys of Maryland: A Biographical Study of Daniel Dulany, the Elder (1685-1753) and Daniel Dulany, the Younger (1722-1797)* (Baltimore: Maryland Historical Society, 1955; reprinted Baltimore: The Johns Hopkins Press, 1968), p. 15), but he provides no hint of where he got that information. Since County Clare was the historical home of the MacNamara Clan (Ronan Coghlan, Ida Grehan, and

P. W. Joyce, *Book of Irish Names: First, Family & Place Names* (New York: Sterling Publishing Co., Inc., 1989), p. 64), Land might have assumed that Thomas Macnemara came from there also.

Michael J. O'Brien speculates that "In all probability, MacNamara was a native of County Galway, as he called his home plantation 'Gallway'." Michael J. O'Brien, "Irish Statesmen in Maryland: Story of an Historic Controversy Among Three Colonial Irishmen, John Hart, Charles Carroll, and Thomas Macnemara," *The Journal of the American-Irish Historical Society*, XIV (1914/1915), p. 215. O'Brien's article is of little use on the relationships among these three men both because it is very general and because of its lack of careful analysis.

<sup>7</sup> Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 120; Charles B. Clark, "The Career of John Seymour, Governor of Maryland, 1704-1709," *Maryland Historical Magazine*, XLVIII, No. 2 (June 1953), pp. 134-159; Michael Graham, "Churching the Unchurched: The Establishment in Maryland, 1692-1724," *ibid.*, LXXXIII, No. 4 (Winter 1988), p. 305, Note 4.

Newton D. Mereness says that John Seymour "was one of those incompetent war governors, so common in the royal provinces . . ." (Newton D. Mereness, *Maryland as a Proprietary Province* (New York: Macmillan Co., 1901; reprinted Cos Cob, Conn.: John E. Edwards, 1968), p. 441), and William T. Russell says that "The name of Governor Seymour will go down in Maryland history with little that is manly and honorable attached to it." William T. Russell, *Maryland: The Land of Sanctuary. A History of Religious Toleration in Maryland from the First Settlement until the American Revolution* (Baltimore: J. H. Furst Company, 1907), p. 390.

For illustrations of the contempt with which John Seymour could treat others, see *Md. Arch.*, XXVI, 44-46, 51-52, 159-160; XXVI, 372-373, 390; Thomas Bray, "A Memorial . . .," in William Stevens Perry, *Historical Collections Relating to the*

*American Colonial Church* (5 vols.; Hartford, Conn.; The Church Press, 1870-1878; reprinted New York: AMS Press, Inc., 1969), IV, 60-61.

<sup>8</sup> Owings, *His Lordship's Patronage*, p. 120; Bernard C. Steiner, "The Restoration of the Proprietary of Maryland and the Legislation Against the Roman Catholics During the Governorship of Capt. John Hart, (1714-1720)," *Annual Report of the American Historical Association for the Year 1899* (2 vols.; Washington: Government Printing Office, 1900), I, 229-307.

Newton D. Mereness says that Hart was "by nature shallow and irritable" (Mereness, *Maryland as a Proprietary Province*, p. 64), and that "the general ability of the man fell far short of his zeal and his good intentions" (*ibid.*, p. 164), but whether a person's intentions are good or bad is determined by the perspective of the viewer. A person who looks closely at Hart's career might be justified in concluding that his intentions were not all that good.

Mereness also says that Hart "was not a strong man." *Ibid.*, p. 445. Just how much of Hart's orneriness resulted from his bad health it is impossible to know. He was sick enough in the summer of 1716 that the assembly passed an act to provide for the succession in case he died (*Md. Arch.*, XXX, 433-434, 552-553, 589, 597, 599; XXXIII, 5-6, 57; 1716, c. 21, *Md. Arch.*, XXX, 625-626), and he was sick again in the summer of 1719. *Md. Arch.*, XXXIII, 326-327.

On 19 March 1718/19 the king gave Hart permission to return to England for a year to recover his health (TNA (PRO), *Calendar of State Papers: Colonial Series*, XXXI, Nos. 121, 143), but once he left Maryland he never went back. See Chapter 14, "Gone But Not Forgotten, 1720," at Notes 13-19. Later, as governor of the Leeward Islands, Hart was also sick. TNA (PRO), *Calendar of State Papers: Colonial Series*, XXXIII, Nos. 771 (pp. 372-372), 772 (pp. 376, 378); XXXIV, Nos. 648 (p. 384), 703 (p. 491); XXXV, Nos. 1 (pp. 1, 2), 151 (p. 73).

Other historians appear to have been too generous with John Hart, though St.

George L. Sioussat does have it half right when he says that Hart was a “worthy but hot-tempered Governor.” St. George L. Sioussat, *Economics and Politics in Maryland, 1720-1750, and the Public Services of Daniel Dulany the Elder*, Johns Hopkins University Studies in Historical and Political Science, 21st Series, Nos. 6-7 (Baltimore: Johns Hopkins Press, 1903), p. 7.

Bernard C. Steiner says more than he could prove when he says that Hart “was one of the best colonial governors.” Steiner, “The Restoration of the Proprietary of Maryland,” p. 252. Why Steiner could say this is unclear, but he was very impressed with Hart’s statement to the assembly at the beginning of its session on 14 May 1719, after he had made a number of recommendations to it, that

. . . as you are I thank God, a Free People so may accept or Refuse what I Now Deliver to you as you shall find it for the Conveniency or Inconveniency of your Country.

*Md. Arch.*, XXXIII, 302, 371.

Steiner calls that statement “one of the most remarkable to be found in the annals of colonial governments” (Steiner, “The Restoration of the Proprietary in Maryland,” p. 295), but such a conclusion is very dangerous unless a person has been through all of the annals of all of the colonial governments. A closer study of Hart’s career might have convinced Steiner that Hart’s words were only words and that he got very impatient with people who actually exhibited the independence that he appears to have been encouraging here.

It is similarly difficult to agree with William Hand Browne when he says that Hart’s administration “seems to have been universally acceptable.” William Hand Browne, “Preface” to *Md. Arch.*, XXX, no page numbers, but page 1. Apparently the Catholics did not count, and either Browne did not know about the unhappiness of the delegates or else did not take it seriously. See Chapter 14, “Gone But Not Forgotten, 1720,” at Notes 13-19, 35-38.

<sup>9</sup> Owings, *His Lordship’s Patronage*, p. 120.

<sup>10</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; Chapter 6, “Dishonest Enemies, 1711-1712.”

<sup>11</sup> At the Anne Arundel County court for August of 1719, which met on 11 August (Anne Arundel County Court Judgment Record, Liber R. C., p. 427), Stephen Warman, the sheriff of Anne Arundel County, returned a writ against Macnemara endorsed “not Executed” (*ibid.*, p. 510), and by the time the provincial court met on 8 September 1719 Macnemara was dead. Provincial Court Judgment Record, Liber W. G., No. 1, pp. 1, 31. For these proceedings against Macnemara, see Chapter 9, “Harassment by Indictment, 1712-1719.”

Apparently Donnell M. Owings had not seen some of these records. He says that Macnemara died “in or shortly before April, 1720.” Owings, *His Lordship’s Patronage*, p. 159.

The return “not Executed” means that Macnemara was still alive, since if he had been dead Warman would have returned the writ endorsed *Mortus Est*, as he did return it to the Anne Arundel County court for November of 1719. Anne Arundel County Court Judgment Record, Liber R. C., p. 569.

<sup>12</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; Letter from Maryland, apparently to Board of Trade, 4 April 1711, TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(b); TNA (PRO), Colonial Office 5, Vol. 720, No. 8(ii).

<sup>13</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127. In “Papists in a Protestant Age: The Catholic Gentry and Community in Colonial Maryland, 1689-1776” (Ph. D. dissertation: The University of Maryland, 1993), Beatriz Betancourt Hardy exhibits considerable confusion on Macnemara’s religion. She says, in order, that he was an ex-Catholic (p. 136), that he was still a Catholic (p. 244), that he had converted to Anglicanism (p. 396), and that he was a member of the Catholic gentry (pp. 492-493).

<sup>14</sup> The Pretender was James Edward, the Old Pretender, the son of James II. Sir George Clark, *The Later Stuarts, 1660-1714* (2nd edition; Oxford: The Clarendon Press, 1955), pp. 240-243, and Genealogical Table.

<sup>15</sup> *Md. Arch.*, XXX, 372-374, 409-410, 516-517; 1718, c. 16, *Md. Arch.*, XXXVI, 525-527; 1719, c. 17, *Md. Arch.*, XXXVI, 528-530. For Macnemara's defending Catholics at this special court of oyer and terminer, see Chapter 11, "Disbarred Again, 1718," at Notes 68-70; and Chapter 13, "Disbarred Once More, 1719," at Note 17.

A court of oyer and terminer and jail delivery was a special court appointed to hear one or more cases so that suspects would not have to be kept in jail until the next session of the provincial court. While usually they tried capital cases, the cases from 10 July 1716 illustrate that they also tried non-capital ones. In non-capital cases the suspects would be kept under bond rather than in jail. C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), pp. 114-118.

Neither in his explanation of this incident to the upper house on 17 July 1716 (*Md. Arch.*, XXX, 372-374) nor in his review of the incident in his speech to the assembly on 6 April 1720 (*ibid.*, XXXIII, 481, 570) does Hart mention the court at which these trials were held. Nor do the members of the assembly when they refer to the special court of oyer and terminer in their acts to disbar Thomas Macnemara in 1718 and again in 1719 (1718, c. 16, *Md. Arch.*, XXXIV, 526; 1719, c. 17, *Md. Arch.*, XXXIV, 529) mention the date on which it was held. It must have been held on 10 July 1716, however, since at a special court of oyer and terminer in Annapolis on that day William FitzRedmond, a gentleman from Annapolis and one of the alleged culprits, gave security of one hundred pounds sterling, with Thomas Macnemara Esquire and Daniel of St. Thomas Jenifer, a gentleman from Calvert County, as his sureties of fifty pounds sterling each, to guarantee his good behavior for one

year. Provincial Court Judgment Record, Liber V. D., No. 2, pp. 158-159.

<sup>16</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 525-527; 1719, c. 17, *Md. Arch.*, XXXVI, 528-530.

<sup>17</sup> Population of Maryland:

Year	Whites	Slaves	Total
1704	30,537	4,475	35,012
1710	34,796	7,945	42,741
1719	55,000	25,000	80,000

Census of Maryland, 1710, TNA (PRO), *Calendar of State Papers: Colonial Series*, XXV, No. 474.i; Council of Trade and Plantations to King, 8 September 1721, *ibid.*, XXXII, No. 656 (p. 420).

For the problems of determining population, however, see Arthur E. Karinen, "Maryland Population: 1631-1730," *Maryland Historical Magazine*, LIV, No. 4 (December 1959), pp. 365-407, especially pp. 373-374.

<sup>18</sup> Roman Catholics in Maryland in 1708, by county:

St. Mary's	1238
Charles	709
Prince George's	248
Queen Anne's	179
Anne Arundel	161
Talbot	89
Somerset	81
Dorchester	79
Baltimore	53
Cecil	49
Calvert	48
Kent	40
Total	2974

*Md. Arch.*, XXV, 258.

<sup>19</sup> See Note 17 above.

<sup>20</sup> The oaths officials had to take even before the passage of 1716, c. 5, *Md. Arch.*, XXX, 612-617, were the oaths of allegiance or obedience, abhorrency or supremacy, and abjuration and the Test. They also had to subscribe the oath of abju-



ration and the Test. *Md. Arch.*, VIII, 69, 264, 305; XIII, 252; XX, 3, 6, 8, 53, 99, 130, 161, 163, 180, 232, 238, 285, 293, 364-365, 388, 390; XXV, 67-68, 173, 174, 335, 336, 337; XXVI, 29-30, 99; XXVII, 496; XXX, 372, 387; Provincial Court Judgment Record, Liber P. L., No. 1, p. 235.

<sup>21</sup> 13 William III, c. 6, par. 1, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), X, 401-402; 6 Anne, c. 7, par. 20, in *ibid.*, XI, 314-315; 1 George I, Stat. 2, c. 13, par. 1, in *ibid.*, XIII, 190; 1704, c. 11, *Md. Arch.*, XXIV, 418-420; 1715, c. 30, *Md. Arch.*, XXX, 228-229.

<sup>22</sup> 1704, c. 11, *Md. Arch.*, XXIV, 418-420.

<sup>23</sup> The Crown disallowed acts of 1692, 1696, and 1700 to establish the Anglican Church in Maryland. **1692, c. 2**, *Md. Arch.*, XIII, 425-430: disallowance — TNA (PRO), *Calendar of State Papers: Colonial Series*, XIV, Nos. 2190, 2230; *Md. Arch.*, XXIV, 133; **1696, c. 18**, *Md. Arch.*, XIX, 426-430: disallowance — *Md. Arch.*, XXIV, 3-4, 4-5, 7-8, 9, 37, 39, 133; XXV, 91, 91-94; Order of King in Council, 30 November 1699, TNA (PRO), *Calendar of State Papers: Colonial Series*, XVII, No. 1018; Council of Trade and Plantations to Nathaniel Blakiston, 4 January 1699/1700, *ibid.*, XVIII, No. 11 (p. 11); **1700, c. 1**, *Md. Arch.*, XXIV, 91-98: disallowance — *Md. Arch.*, XXIV, 207-208; TNA (PRO), *Calendar of State Papers: Colonial Series*, XIX, Nos. 157, 175.

In 1699 the assembly re-enacted the act of 1696 along with many others in one “Act Ascertain[ing] the Laws of . . . [the] Province” (1699, c. 46, *Md. Arch.*, XXII, 558-562, especially p. 561), but the Crown disallowed it, too. *Md. Arch.*, XXIV, 133, 163; Council of Trade and Plantations to Nathaniel Blakiston, 4 January 1699/1700, TNA (PRO), *Calendar of State Papers: Colonial Series*, XVIII, No. 11 (p. 11).

<sup>24</sup> *Md. Arch.*, XXIV, 207-208.

<sup>25</sup> 1702, c. 1, *Md. Arch.*, XXIV, 265-266. Taxables included all free white males and male servants sixteen years old or over and all slaves, male or female, six-

teen years old or over. Clergymen and “such poor & Impotent persons . . . [who received] Alms from the County” were excepted. 1699, c. 31, *Md. Arch.*, XXII, 514-515.

<sup>26</sup> For illustrations of the fear and loathing of Catholics in Maryland in the first two decades of the eighteenth century, see *Md. Arch.*, XXV, 241-242, 243; XXVI, 44-46, 61, 159-160, 160, 451, 453, 484, 487, 489, 526, 568-569, 591-592, 597-598, 606; XXX, 377, 401, 411, 415-416, 421, 421-424, 434, 520-521, 538-539; XXXIII, 7, 45, 103-104, 119-123, 131-132, 136-138, 146-147, 147-149, 150, 151, 192, 202-206, 274-275, 277-279, 299-300, 308-309, 309, 315-316, 358-359, 368-369, 383-384, 479-485, 532-533, 537, 568-574, 620, 622-623.

For entries that include the names of specific Catholics, see *ibid.*, XXXIII, 503-504, 516, 519, 532, 532-533, 533, 620, 620-621, 621, 621-622, 622.

<sup>27</sup> 1699, c. 23, *Md. Arch.*, XXII, 497-498: “An Act for Raising a Supply towards the defraying of the Publick Charge of this Province and to prevent too Great a number of Irish Papists being Imported into this Province.”

<sup>28</sup> 1704, c. 9, *Md. Arch.*, XXIV, 416; 1704, c. 33, *Md. Arch.*, XXVI, 289-290, continued by 1708, c. 16, *Md. Arch.*, XXVII, 371, and 1712, c. 22, *Md. Arch.*, XXXVIII, 165; 1715, c. 36, *Md. Arch.*, XXX, 328.

<sup>29</sup> *Md. Arch.*, XXX, 473, 605; 1716, c. 6, *Md. Arch.*, XXXVIII, 198.

<sup>30</sup> Owings, *His Lordship's Patronage*, p. 114.

<sup>31</sup> *Md. Arch.*, XXXIII, 3-4, 55. The earlier acts also applied to all Irish, whether Protestant or Catholic. See Notes 27 and 29 above.

<sup>32</sup> 1717, c. 10, *Md. Arch.*, XXXIII, 109-111.

<sup>33</sup> 1704, c. 59, *Md. Arch.*, XXVI, 340-341.

<sup>34</sup> By the English act of 1700 parliament provided that the punishment for a practicing priest would be imprisonment for life, while by the provincial act of 1704 the punishment was a fine of fifty pounds sterling “for every such Offence” and

imprisonment for six months. For the second offense the provincial priest would be sent to England, where he would be prosecuted under English law.

The English law was also harsher than the provincial law in that it made no exception for the Catholic priest who baptized the child of Catholic parents.

There was no need for parliament to provide a punishment for a second offense, since after the first offense the priest would be in jail for life. 11-12 William III, c. 4, in Pickering, *The Statutes at Large*, X, 315-319.

<sup>35</sup> 1704, c. 59, *Md. Arch.*, XXVI, 341. Much of the wording of this act is identical to some of the wording of the English act of 1700, 11-12 William III, c. 4.

<sup>36</sup> *Md. Arch.*, XXVI, 591-592; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXII, No. 1530. In a petition to the lower house on 11 April 1706 the Catholics say that they had petitioned for the repeal of the “Act to prevent the Growth of Popery” in the province rather than only for its suspension. *Md. Arch.*, XXVI, 591-592.

<sup>37</sup> TNA (PRO), *Calendar of State Papers: Colonial Series*, XXII, Nos. 1530.i, 1530.ii; 1704, c. 95, *Md. Arch.*, XXVI, 431-432. Oliver M. Dickerson says that Queen Anne disallowed the two acts of 1704 (Oliver M. Dickerson, *American Colonial Government, 1696-1765: A Study of the British Board of Trade in Its Relation to the American Colonies, Political, Industrial, Administrative* (Cleveland: A. H. Clark Co., 1912; reprinted New York: Russell & Russell, Inc. 1962), p. 232, 232n.), but the proceedings of the assembly that follow the passage of those acts make it clear that if she did the members of the assembly did not know it. This might be a case in which after the Board of Trade recommended disallowance the Privy Council took no action, as did sometimes happen. *Ibid.*, p. 271.

<sup>38</sup> *Md. Arch.*, XXVI, 543-544, 547, 591-592, 597-598, 598, 606.

<sup>39</sup> 1706, c. 9, *Md. Arch.*, XXVI, 630-631.

<sup>40</sup> *Md. Arch.*, XXVII, 18; 1707, c. 6, *Md. Arch.*, XXVII, 146-148. The date and

the content of the queen's order are stated in the act itself.

<sup>41</sup> *Md. Arch.*, XXXIII, 278; William Edward Hartpole Lecky, *A History of England in the Eighteenth Century* (7 vols.; New York: D. Appleton & Co., 1892-1893), I, 6.

<sup>42</sup> *Md. Arch.*, XXXIII, 279.

<sup>43</sup> 1715, c. 30, *Md. Arch.*, XXX, 228-229. In the spring of 1714/15 parliament passed a new act requiring the oaths of abjuration, obedience or allegiance, and supremacy or abhorrency. 1 George I, Stat. 2, c. 13, par. 1, in Pickering, *The Statutes at Large*, XIII, 189-190.

<sup>44</sup> 1715, c. 39, *Md. Arch.*, XXX, 334-335.

<sup>45</sup> In 1729 the assembly made it easier to take children of the Catholic widow of a Protestant or the Protestant widow who married a Catholic away from her when it provided that county justices rather than the governor and his council could remove the children of a mother in either of these situations from her custody and place them where they would be "securely educated in the Protestant Religion." 1729, c. 24, *Md. Arch.*, XXXVI, 488.

For the continuance of this provision for the remainder of the colonial period see Thomas Bacon, *Laws of Maryland at Large* (Annapolis: Jonas Green, 1765), and William Kilty, *The Laws of Maryland* (2 vols.; Annapolis: Frederick Green, 1799-1800), under 1715, c. 39, and 1729, c. 24 in both.

<sup>46</sup> *Md. Arch.*, XXX, 372-374; Hart's speech to the assembly, 6 April 1720, *ibid.*, XXXIII, 481-483, 569-572.

<sup>47</sup> 1716, c. 5, *Md. Arch.*, XXX, 612-617.

<sup>48</sup> *Md. Arch.*, XXXIII, 206. The record says that Benjamin Tasker had become sheriff of Annapolis, but the sheriff of Anne Arundel County was also the sheriff of the city. Charter of Annapolis, 22 November 1708, in Chancery Record 2 (1671-1712), p. 599; Elihu S. Riley, "The Ancient City." *A History of Annapolis, in Mary-*

*land. 1649-1887* (Annapolis: Record Printing Office, 1887), p. 89; Annapolis Records 2, p. 43; Commission Records, 1726-1786, pp. 132, 135, 139.

Tasker became sheriff of Anne Arundel County sometime before the Anne Arundel County court met on 12 November 1717, and Stephen Warman replaced him sometime before the court met on 11 November 1718. Anne Arundel County Court Judgment Record, Liber R. C., pp. 79, 141, 198, 231, 252.

The previous session of the assembly ended on 8 June 1717. *Md. Arch.*, XXXIII, 49, 106.

<sup>49</sup> For the form of the writ of election, which specifies that a sheriff cannot be a delegate, see 1716, c. 11, *Md. Arch.*, XXX, 618-619.

<sup>50</sup> *Md. Arch.*, XXXIII, 279.

<sup>51</sup> 1718, c. 1, *Md. Arch.*, XXXIII, 287-289.

<sup>52</sup> *Md. Arch.*, XXVII, 385, 424.

<sup>53</sup> *Ibid.*, pp. 141, 144-145, 149-150, 219, 221, 222, 224.

<sup>54</sup> 1704, c. 59, *Md. Arch.*, XXVI, 340-341.

<sup>55</sup> 1704, c. 95, *Md. Arch.*, XXVI, 431-432; 1706, c. 9, *Md. Arch.*, XXVI, 630-631; 1707, c. 6, *Md. Arch.*, XXVII, 146-148.

<sup>56</sup> 1718, c. 4, *Md. Arch.*, XXXIII, 289.

<sup>57</sup> See the wrangle over the judgment against Abraham Birkhead in the chancery court in September of 1717, in Calvert Papers, No. 260, Maryland Historical Society, and Chapter 9, "Harassment by Indictment, 1712-1719," at Notes 114-118.

<sup>58</sup> Macnemara went to England sometime after 11 October 1716 (Provincial Court Judgment Record, Liber P. L., No. 4, pp. 83-84), and apparently he returned to Maryland sometime before the provincial court met on 9 April 1717. *Ibid.*, Liber V. D., No. 2, pp. 381, 390; Liber V. D., No. 3, pp. 78-81; *Md. Arch.*, XXXVI, 530-532; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXX, No. 289.

There is some ambiguity about when Macnemara returned to Maryland.

According to John Beard, the register in chancery (Owings, *His Lordship's Patronage*, p. 142), on 21 May 1717 John Hart and William Coursey sitting in chancery continued fifty cases that Maurice Birchfield, the surveyor general of customs (*ibid.*, p. 181), had brought against Marylanders because Macnemara, who was prosecuting for Birchfield, was in England. Chancery Record 3, pp. 379, 380, 381. For 21 May 1717 as the date on which this court sat, see *ibid.*, p. 376.

According to the record of the provincial court, however, Macnemara appeared for himself when at the provincial court for April of 1717, which met on 9 April (Provincial Court Judgment Record, Liber V. D., No. 2, p. 381), the justices struck off an action that William Bladen, the attorney general, had brought against him on a *scire facias* (*ibid.*, p. 390), and at that same court Macnemara is listed as the attorney for Dominick Kenslagh when the justices quashed an indictment against him for assaulting James Harris, the sheriff of Kent County. *Ibid.*, Liber V. D., No. 3, pp. 78-81, especially p. 81.

Besides that, at the chancery court on 21 May 1717 three cases in which Macnemara served as the attorney were settled. Chancery Record 3, pp. 377, 379, 382.

The *scire facias* is a writ for the recovery of a judgment that has not been paid or for the forfeiture of bail. Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 1346.

For the case against Dominick Kenslagh, see Chapter 2, "Competence," after Note 127-130.

While it is impossible to be sure, the preponderance of the evidence, as they say, appears to indicate that Macnemara was back in Maryland by the time the provincial court met on 9 April 1717.

<sup>59</sup> *Md. Arch.*, XXXIII, 181-182, 258-259. See also Chapter 7, "Respectability, 1713-1719," at Notes 37-40.

<sup>60</sup> Chancery Record 3, p. 397; *Md. Arch.*, XXXIII, 127.

<sup>61</sup> *Md. Arch.*, XXXIII, 129-130.

<sup>62</sup> *Ibid.*, pp. 127, 129-130.

<sup>63</sup> A lawyer's waiving his fee was so unusual as to be surprising. When

In the controversy surrounding Governor [Robert] Eden's proclamation of October 1770, several lawyers offered to defend free of charge those who refused to pay the fees levied under that proclamation,

their "gesture . . . produced sarcastic reaction in the press." Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), p. 87.

<sup>64</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 36-37, 37.

<sup>65</sup> By an act of 1704 the assembly provided that the freedom dues for a man would be one new hat, a good suit, which would consist of a coat and breeches of kersey or broadcloth, one new shift of white linen, one new pair of French fall shoes and stockings, two hoes and one ax, and one gun worth twenty shillings and with a barrel no less than three-and-a-half feet long and no more than four feet long. A female servant would get a waistcoat and petticoat "of new half thick or pennystone," a new shift of white linen, shoes and stockings — apparently one pair of each —, a blue apron, two caps of white linen, and three barrels of Indian corn. 1704, c. 23, *Md. Arch.*, XXVI, 256.

Earlier acts were similar. By an act of 1676 the assembly provided that except for the hat the freed male servant would get the same clothes as provided by the act of 1704 and would receive three barrels of Indian corn instead of the gun. Women would get the same freedom dues as men. 1676, c. 7, *Md. Arch.*, II, 525.

By an act of 1699 the assembly provided the same freedom dues for men, except that he got the hat again and got a gun instead of the Indian Corn, and

provided that women would have “the like Provision of Cloaths and three Barrells of Indian Corne.” 1699, c. 43, *Md. Arch.*, XXII, 548.

<sup>66</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 413.

<sup>67</sup> *Ibid.*, p. 567. In Thomas Bayly’s case there is no reference to the costs of the petition.

<sup>68</sup> Baltimore County Court Proceedings, Liber I. S., No. A, pp. 60, 122.

<sup>69</sup> *Ibid.*, Liber G. M., p. 127. I have not found the record of Thomas Williamson’s being assigned to Andrew Berrey’s service.

<sup>70</sup> Macnemara had been practicing law in Maryland only since March of 1703/4. Anne Arundel County Court Judgment Record, Liber G, p. 320; Prince George’s County Court Record, Liber B, p. 289; Provincial Court Judgment Record, Liber T. L., No. 3, pp. 261, 266; *Md. Arch.*, XXV, 226-227.

For the dates on which Macnemara was admitted to practice in the various courts in Maryland, see also Chapter 2, “Competence,” at Notes 5-13, and Day, *A Social Study of Lawyers in Maryland, 1660-1775*, pp. 513-514.

<sup>71</sup> At the provincial court for October of 1713 and for six courts after that Macnemara served with Thomas Bordley as an attorney for the free Negro Jupiter in his effort to recover damages from Mary and Philemon Hemsley for false imprisonment for Mary Hemsley’s keeping him in servitude while she was still Mary Contee, the widow of John Contee. By the time the case ended, in July of 1716, Bordley was acting alone for Negro Jupiter. In this case, Macnemara and Bordley were no doubt working for Charles Jones, Negro Jupiter’s new master, rather than for Negro Jupiter himself. Provincial Court Judgment Record, Liber V. D., No. 2, pp. 94-98; C. Ashley Ellefson, “Free Jupiter and the Rest of the World: The Problems of a Free Negro in Colonial Maryland,” *Maryland Historical Magazine*, LXVI, No. 1 (Spring 1971), pp. 1-13.

<sup>72</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 268-270; Chapter



3, “Early Troubles, 1703-1710,” at Notes 2-12.

<sup>73</sup> Anne Arundel County Court Judgment Record, Liber G, pp. 493, 647; Chapter 3, “Early Troubles, 1703-1710,” at Notes 17-19.

<sup>74</sup> See Chapter 9, “Harassment by Indictment, 1712-1719,” Chapter 11, “Disbarred Again, 1718,” and Chapter 13, “Disbarred Once More, 1719.”

<sup>75</sup> Anne Arundel County Court Judgment Record, Liber G, pp. 414-416, 613-614; Liber T. B., No. 1, pp. 45-46, 109-111, 111-113.

A quorum justice was one of the highest-ranking justices, without at least one of whom the court could not sit at all. *Md. Arch.*, XXXIII, 415; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 13, 173-174.

<sup>76</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 150. The record does not state the amount of Macnemara’s recognizance, nor does it mention any sureties.

<sup>77</sup> *Ibid.*, p. 148.

<sup>78</sup> *Ibid.*, Liber T. B., No. 2, p. 325.

<sup>79</sup> *Ibid.*, pp. 372-401.

<sup>80</sup> *Ibid.*, Liber T. B., No. 3, p. 110a.

<sup>81</sup> 1715, c. 44, *Md. Arch.*, XXX, 283-284.

<sup>82</sup> Baltimore County Court Proceedings, Liber G. M., p. 7.

<sup>83</sup> Imposing the maximum penalty of ten days for one for running away, as well as imposing long additional terms to reimburse masters for the costs of recapturing the runaway servants, was common practice. C. Ashley Ellefson, “The Functions of Punishments in Eighteenth-Century Maryland,” Paper delivered at the Hall of Records’ Conference on Maryland History in Honor of Morris L. Radoff, Annapolis, 14-15 June 1974.

<sup>84</sup> Prince George’s County Court Record, Liber C, p. 57a.

<sup>85</sup> Provincial Court Judgment Record, Liber T. B., No. 2, pp. 194, 207-209.

Some of the records of the provincial court for September of 1706, when Rozier would have appeared on the recognizance, are missing. See *ibid.*, end of Liber T. B., No. 2, and beginning of Liber P. L., No. 1.

In the index to the Provincial Court Judgment Record at the State Archives in Annapolis there is no reference for the further outcome of Rozier's case. His trial occurred on 15 May 1706, the day after the court opened. Provincial Court Judgment Record, Liber T. B., No. 2, p. 191.

<sup>86</sup> The law required that the person suing out a writ of error or appealing a judgment give security of double the amount recovered against him, with sureties whom the chancellor in the case of a writ of error or the justices who awarded the judgment in the case of an appeal considered sufficient, to guarantee that he would pursue the writ of error or appeal and pay the judgment and the plaintiff's costs if he did not pursue it or if the superior court upheld the judgment of the inferior court. 1704, c. 32, *Md. Arch.*, XXVI, 286; 1712, c. 5, *Md. Arch.*, XXXVIII, 150-151; 1713, c. 4, *Md. Arch.*, XXIX, 336-337.

Since in Wharton's case there was no monetary judgment the justices must have established what they considered an appropriate amount for the bond.

<sup>87</sup> Provincial Court Judgment Record, Liber V. D., No. 1, pp. 150-152. Almost three years before Mulatto Lewis Mingo petitioned for his freedom, the grand jury at the provincial court for October of 1710 returned one indictment against him, Henry Wharton, and John Wilkinson (*ibid.*, Liber P. L., No. 3, p. 383), but since one year later the court entered a non pros against the three (*ibid.*, Liber T. P., No. 2, pp. 320-321) there is no way to know what they were alleged to have done.

<sup>88</sup> 1663/4, c. 30, *Md. Arch.*, I, 533-534.

<sup>89</sup> 1681, c. 4, *Md. Arch.*, VII, 203-205. During the same session at which the assembly passed this law Mary Peters, "a Servant or Slave" of a Mr. Carberry, petitioned Governor Lionel Copley and the upper house to free her because, she claimed,

through the Illusion and Instigation of her late Master and Mistress she had married with a Christian Negro [and] was drawn into Slavery altho she had really [already?] served above eight years more than the time she came in for.

Copley and the members of the upper house made no decision but because they wanted time to check the law “relating to Negroes and Slaves” to decide whether Mary Peters should be freed. *Md. Arch.*, XIII, 323. What they decided does not appear.

An obsolete definition of “illusion” is “the action of deceiving or attempting to deceive.” *Webster’s Third New International Dictionary of the English Language Unabridged* (1981).

<sup>90</sup> 1692, c. 79, *Md. Arch.*, XIII, 546-549.

## *Chapter 2*

### *Competence*

The fourth obvious reason for authority's distrust of Thomas Macnemara is that he was competent at his job. He might have been the best lawyer in the province, and he did not hesitate to exploit his talents. Even his enemies conceded that he had great "Capacity and Abilities."<sup>1</sup> His ability made him a threat to all of the less competent,<sup>2</sup> and that ability combined with his courage, his alleged sympathy for Catholics, and his occasional sympathy for the underdog made him a potential threat not only to the Protestant establishment but also to the entire exploitive economic, social, and political structure of the province.

As his enemies bitterly complained, Macnemara was always a stickler for technicalities,<sup>3</sup> just as any good lawyer must be. As he must have known, it is the technicalities that are supposed to protect suspects and defendants against railroading by ambitious and unscrupulous officials. Thus again Macnemara was a threat to the powerful in the province.

If Macnemara arrived in Maryland in the spring of 1703, as he apparently did,<sup>4</sup> he started practicing law within a year. Already at the Anne Arundel County court in March of 1703/4, just after he married Charles Carroll's niece Margaret Carroll,<sup>5</sup> the justices admitted him to practice in that court after he informed them that he had

been “bred with an able Atty in the Kingdom of Ireland.”<sup>6</sup> In their contemptuous and dishonest letter about Macnemara to the Board of Trade on 18 July 1712, however, the members of the council would give him no such credit: they would begrudgingly concede only that he had “gained some Tollerable Shoole [*sic*] learning from the Charity of a Popish Priest his Unckle.”<sup>7</sup>

A few days after his admission to practice in the Anne Arundel County court the justices of Prince George’s County admitted Macnemara to practice there.<sup>8</sup> Probably he was also admitted to practice in the Calvert County court in March of 1704, though it could have been in June or August,<sup>9</sup> and at the provincial court for May of 1704 the justices admitted him to practice in that court.<sup>10</sup> On 11 November 1709 he was admitted to practice in the high court of appeals,<sup>11</sup> and by March of 1709/10 he was practicing in the Baltimore County court<sup>12</sup> and in the chancery court.<sup>13</sup>

It did not take Macnemara long to show that this new boy in town was going to be a star. Beginning his practice in Maryland only in March of 1703/4, by March of 1705 he was already making his mark.

At the Prince George’s County court for November of 1704 the grand jury on the information of John and Ann Bennett and Peter Lycence presented Thomas Keysey, James Key, and Morgan Collins for a breach of the peace. William Young, the foreman of the grand jury, signed the presentment.<sup>14</sup> At the court for January of 1704/5 Key and Keysey appeared under writs of *venire facias ad respondendum*<sup>15</sup> to answer to what the record calls indictments against them for entering Bennett’s house “in a Riottous and disorderly manner.” After the two men asked for counsel the justices “by the Speatiall Favour of . . . [the] Court” appointed Joshua Cecil to represent them.<sup>16</sup> Cecil imparled until the next court,<sup>17</sup> and the justices required each defendant to enter security of ten pounds sterling, with one surety of the same amount, to guar-

antee his appearance at the March court and to guarantee his good behavior toward all of the queen's subjects, but especially toward John Bennett, in the meantime. John Barrett became Key's surety, and Thomas Wainwright became surety for Keysey.<sup>18</sup>

At the Prince George's County court for March of 1705 Key and Keysey were tried on separate bills of indictment. James Haddock, apparently taking advantage of a new law that except in cases of alleged theft allowed the clerk of indictments twice as much tobacco for drawing up a bill of indictment than he would receive if he prosecuted on a presentment and the defendant confessed,<sup>19</sup> did not send the bills before any grand jury but rather simply drew them up on the basis of the presentment that the grand jury had returned, as the new law allowed him to do. Only James Haddock signed the bills.<sup>20</sup>

In the bill of indictment against Key, Haddock charged that with several other ill-disposed persons in Mount Calvert Hundred on 29 November 1704 Key, a laborer, entered John Bennett's dwelling house with swords, guns, and staves and "did put [Bennett] in Bodily fear and divers other harms to him did." After hearing the charge against him Key pleaded guilty.

Apparently it was at this point that Key got a new lawyer, Thomas Macnemara, who argued that even though Key had pleaded guilty and even though Bennett was put in bodily fear Key "had not in any manner broaken" the queen's peace, that therefore no fine was due to the queen, and that Key "could not Lawfully be punished w<sup>th</sup> a Corporall Punnishment," either.

How Macnemara justified his argument does not appear, but the justices accepted it. Possibly the three men had had no intention of frightening Bennett but were a little drunk and were just having some ill-chosen fun. However that might be,

the justices were not willing to let Key entirely off the hook. Instead they ruled that since “noe encouragement should be given to any such Person for the ffuture” Key should be committed to the custody of the sheriff of Prince George’s County until he could give security to guarantee his good behavior toward all the queen’s subjects and, again, especially toward John Bennett.

Key did not remain in custody for long. He was able to give bond of ten pounds sterling, with John Barrett again as his surety in the same amount, to guarantee his appearance at the June court and to guarantee his good behavior, especially toward Bennett, in the meantime. Barrett also agreed to pay Key’s fees.<sup>21</sup>

The bill of indictment that Haddock drew up against Keysey, another laborer, was the same as that against Key except that the several other ill-disposed persons became several other evil-disposed persons. After Keysey pleaded guilty Joshua Cecil made the same argument that Macnemara had made for Key. He argued that the testimony of the witnesses did not prove that Keysey had broken the queen’s peace and therefore he should not be fined.

Again the justices agreed, but, even though they could not fine Keysey, to deter others from such actions they required him to give security to guarantee his appearance at the next court and his good behavior, especially toward John Bennett, in the meantime. Thomas Wainwright, who now turns out to be Keysey’s master, provided the security of twenty pounds sterling. That same day the justices ruled that Keysey should serve Wainwright one additional day for every day he had been in jail, but the record says nothing about Keysey’s fees.<sup>22</sup>

Whether Joshua Cecil learned from Thomas Macnemara or Macnemara from Cecil is not clear, but apparently Macnemara was the teacher and Cecil the student. If Cecil had been planning to make the argument before he heard it from Macnemara

there would have been no reason for Key to change lawyers.<sup>23</sup>

Morgan Collins must have concluded that an argument that had worked for two lawyers might also work for him without a lawyer. At the June court he pleaded guilty to the bill of indictment that Haddock had drawn up against him and then told the court that “although he and the Ill Company he was in” had put John Bennett into bodily fear “they had not Broken y<sup>e</sup> Queens Peace by doeing any other harme” either to Bennett or to any of his family and that therefore the justices should impose neither corporal punishment nor a fine on him.

With the precedents of James Key and Thomas Keysey before them the justices could hardly have disagreed, but, again even though they could not punish Collins with either corporal punishment or a fine, to deter others from such behavior they required Collins to give bond to guarantee his good behavior and his appearance at the August court. John Henry provided the security of twenty pounds sterling to guarantee Collins’ appearance and his good behavior, especially toward John Bennett, in the meantime. The record says nothing about his fees.<sup>24</sup>

If Thomas Macnemara taught Joshua Cecil something that was useful to him as a lawyer, five months later Cecil might have wished that Macnemara was not quite so good. Apparently Cecil and Richard Jones had had a fight and Macnemara was able to convince the petit jury that the fight was Cecil’s fault.

At the Prince George’s County court for March of 1705 — the same court at which Macnemara and Cecil got James Key and Thomas Keysey off without punishment for something that both defendants admitted that they had done — the grand jury on the information of Richard Weaver presented Cecil for striking Jones and on the information of Hannah Price presented Jones for throwing Cecil “into the ffyer.”<sup>25</sup>



On the basis of the presentments Haddock drew up two bills of indictment in which he charged that in Charles Town on an unspecified date in 1704 Cecil and Jones assaulted each other. Neither bill is endorsed or signed by the foreman of the grand jury. At the June court Cecil, a gentleman, appeared for himself, while Macnemara appeared for Jones, a planter. Both defendants imparled to the next court. In August both defendants pleaded not guilty, but one petit jury found Cecil guilty and Jones not guilty. The justices discharged Jones and fined Cecil one hundred pounds of tobacco. Both men also had to pay their fees.<sup>26</sup>

If Macnemara could teach Joshua Cecil something about pleading, at the provincial court for May of 1706 he had a lesson for William Bladen, the attorney general, about the necessity of accuracy in drawing up indictments. Unimpressed by Macnemara's generosity, Bladen would become one of his fiercest persecutors.<sup>27</sup>

At the provincial court for September of 1705 Bladen sent before the grand jurors a bill of indictment in which he charged that on 11 August 1703 before Philip Briscoe and William Herbert, two of the commissioners of the peace of Charles County, and again on 16 May 1704 before Thomas Smithson, the chief justice of the provincial court, and other provincial justices Thomas Whichaley, who was a gentleman and a lawyer from Charles County,<sup>28</sup>

the fear of God before his Eyes not having but being moved by the Instigation of the Devill and out of desire of filthy Lucre to Make unlawfull Gaine to himself . . . did make Oath to a certain Account and did swear that the same was Just and true and that he had received No part or Parcell thereof More than what he had therein given Credit for.

In that account Whichaley swore that the estate of Captain John Bayne had owed him 38,348 pounds of tobacco, had paid him 21,421 pounds of tobacco, and therefore still

owed him 16,927 pounds of tobacco. In truth, Bladen charged, at the time of Whichaley's oath John Bayne's estate owed him nothing, his oath "was false and untrue," and "by swearing that the Account . . . was Just & true" he had committed willful and corrupt perjury.<sup>29</sup>

The grand jury returned the indictment a true bill, and the justices ordered the sheriff of Anne Arundel County, apparently John Gresham Jr.,<sup>30</sup> to take Whichaley into his custody to answer the indictment. When Whichaley appeared and asked for a continuance until the next court the justices granted the continuance and returned Whichaley to Gresham's custody until he could find sufficient sureties of one hundred pounds sterling to guarantee his appearance at that court and his good behavior in the meantime.

Apparently Whichaley could not provide the security but remained in jail. At the provincial court for May of 1706 Josiah Wilson, the new sheriff of Anne Arundel County,<sup>31</sup> brought him into court, and when the justices asked him "how he would Acquit himself of the premises" he replied that he was not guilty and put "himself upon God & the Country," which means that he asked for a trial by jury. The petit jury found him guilty, however, and when the justices "Demanded what he . . . [had] for himself to say" why the court should not proceed to judgment he responded that since he was "Illiterate and altogether Ignorant of the Law he . . . be Allowed his Councill to speake for him in his behalf." Apparently he asked specifically that the justices assign Macnemara as his counsel, and the justices did do that.<sup>32</sup>

Macnemara argued that the justices should not give judgment on the verdict because for two reasons "the Indictment and the Matter therein Contained . . . [were] not sufficient in Law to Compell" Whichaley to answer it. In the first place, in the indictment Whichaley was charged with committing perjury "by making Oath to an

account before Philip Briscoe and William Herbert,” commissioners of the peace for Charles County, but as commissioners of the peace Briscoe and Herbert “had no authority to Administer such oath and therefore the Administration thereof was Irregular” and the oath was void, and “No record ought to be” made of it.

Second, Macnemara argued, Whichaley was charged with committing perjury by swearing to the account before Thomas Smithson and his associates, but it appeared by the record that Smithson did not sit in court during the term when Whichaley swore to the account. Rather Philip Hoskins presided at that court, and therefore even if by swearing to the account Whichaley did commit perjury he was “falsely charged with it in the . . . Indictment” because he did not commit it “in such manner as therein it . . . [was] set forth.”

Because of the insufficiency of the indictment, therefore, Macnemara asked the justices to discharge Whichaley.

All Macnemara meant by saying that as commissioners of the peace Briscoe and Herbert had no authority to administer the oath to Whichaley is that Bladen should have referred to them as commissioners of oyer and terminer or commissioners for the trial of causes rather than as commissioners of the peace, since the oath related to a civil case rather than to a criminal action.<sup>33</sup> And since Philip Hoskins did preside at the provincial court for May of 1704,<sup>34</sup> in the indictment Bladen should have referred to him rather than to Thomas Smithson.

The justices agreed with Macnemara. “All & singular the p<sup>r</sup>mises being . . . heard seen & fully understood,” they ruled that the indictment was not sufficient in law and therefore dismissed Whichaley “of the Premises.” They had no intention of letting him go free and clear, however, but instead required him to give security to guarantee his good behavior and his appearance at the next provincial court. When

Whichaley could not provide the security they returned him to the custody of the sheriff of Anne Arundel County, who would turn him over to the sheriff of Charles County.<sup>35</sup> What happened after that has not appeared.<sup>36</sup>

At the Anne Arundel County court the next month Macnemara had two more lessons for Bladen,<sup>37</sup> this time about prosecuting people for theft and for slandering private individuals.

At the Anne Arundel County court for March of 1705/6 the grand jury returned two presentments endorsed *billa vera*<sup>38</sup> against Christopher Vernon,<sup>39</sup> a gentleman and a former clerk<sup>40</sup> and clerk of indictments of Anne Arundel County.<sup>41</sup> After Macnemara at the June court argued that the justices should quash the first presentment, for killing a hog belonging to John Noades, because of its “Insufficiency & Incertainty,” the justices ruled that since “the said Presentm! . . . [was] insufficient and uncertaine . . . the said Indictm! be quasht,” thus revealing their failure to distinguish between a presentment and an indictment,<sup>42</sup> and discharged Vernon with his fees only.<sup>43</sup>

Apparently the reason that the presentment against Vernon was insufficient and uncertain is that a prosecution for theft required an indictment by a grand jury,<sup>44</sup> and in spite of the justices’ wording the precept against Vernon was only a presentment. An indictment contained a lot more information than a presentment did, and therefore it was much more exact.<sup>45</sup> Presentments were used to prosecute very minor crimes, such as bastardy<sup>46</sup> and assault.<sup>47</sup> When a grand jury presented a suspect for one of the more serious crimes the attorney general or the clerk of indictments, if he wanted to prosecute, was supposed to draw up an indictment to send before the grand jury.<sup>48</sup>

In the second case against Vernon, Bladen on the basis of the presentment drew up a bill of indictment in which he charged that on 1 February 1705/6 Vernon “of his

Mallice fore thought did most wickedly and falsely defame and scandalize” Jonathan Jones, a planter from Anne Arundel County, by saying that Jones had mismarked and kept a hog belonging to John Noades. Bladen did not send the bill of indictment before the grand jury but prosecuted Vernon on the bill he had drawn up.<sup>49</sup>

Representing Vernon again, Macnemara pleaded *nul tiel record*, which means that there is no such record as the plaintiff claims,<sup>50</sup> and asked the justices to discharge Vernon. Bladen responded that Vernon’s plea was “altogether insignificant and Insufficient” and that he should “a further & Better answer Make,” but the justices decided that the plea was “sufficient and Well pleaded,” ordered that Vernon “be acquit,” and again discharged him with his fees only.<sup>51</sup>

By pleading *nul tiel record* Macnemara must have meant one of two things — or possibly both. First, there was no record because there was no indictment against Vernon, since no grand jury had ever returned one. A bill of indictment that had not been sent before a grand jury was not an indictment.

More likely, Macnemara might have meant that there was no record because a person could not be prosecuted in the common-law courts for slandering a private individual. *Nul tiel record* equals there is no such record equals there is no such prosecution.<sup>52</sup> While a person could be prosecuted in the common-law courts for slandering a peer or an official,<sup>53</sup> the private individual had to have recourse to a civil suit for slander.<sup>54</sup> Criminal actions of defamation of private individuals could be tried only in the ecclesiastical courts.<sup>55</sup>

Macnemara’s successes continued. At the provincial court for May of 1707 he not only helped Joseph Hill gain an acquittal for misprision of treason as an alleged accomplice of the notorious alleged counterfeiter and traitor Richard Clarke,<sup>56</sup> but he also defeated Bladen in his prosecutions of Richard Harrison Jr. and Captain Edward

Hammond.

After the grand jurors at the Calvert County court for November of 1706 presented Harrison for “Trespass and Breech of the peace,” Richard Dallam, the clerk of indictments, drew up a bill of indictment in which he charged that in Lyon’s Creek Hundred on 28 December 1705 Harrison, a gentleman, cut a “swallow fforke”<sup>57</sup> in one of the ears of a black mare belonging to John Mortemore, already branded with an X on one of her buttocks and worth eight hundred pounds of tobacco.<sup>58</sup>

At the Calvert County court for January of 1706/7 Harrison produced a writ of *certiorari*<sup>59</sup> to remove the case to the provincial court.<sup>60</sup> With Macnemara as his counsel, at the provincial court for May of 1707 Harrison pleaded not guilty. Bladen, as attorney general prosecuting for the queen,<sup>61</sup> insisted that Harrison was guilty, but the petit jury found him not guilty and the justices discharged him.<sup>62</sup>

In the prosecution of Edward Hammond for “adulterous Actions” Macnemara gave Samuel Worthington, the clerk of indictments of Somerset County,<sup>63</sup> a lesson in how to draw up an indictment and then had a further lesson for William Bladen.

Sometime before March of 1705/6 Enoch Griffen, an illiterate tailor, petitioned the vestry of All Hallows Parish in Somerset County against Hammond for his “abominable Practice” of unlawfully and scandalously cohabiting with Griffen’s wife Joan or Jane. Hammond’s conduct, Griffen noted, was sufficiently known to the vestry. For that as well as for other abuses Griffen was to address the county court, and he begged the vestrymen’s assistance both as vestrymen and in court in order that speedy and effectual action could be taken to correct Hammond’s behavior, which was “Dishonourable to God and hurtfull” to Griffen.<sup>64</sup>

When the Somerset County court met on 12 March 1705/6 the vestry presented Hammond to the grand jury for unlawfully cohabiting with Joan Griffen, “as Com-

mon ffame says,” even though Robert Keith, the minister of All Hallows Parish, had warned and admonished him. Griffen told the court that it was “well Known and to [*sic*] True how Much” he had been abused by Hammond’s “sinfull and shamefull Cohabiting with” his wife “for a Considerable time past.” In spite of Griffen’s complaints and even though both the vestry and Robert Keith had admonished Hammond several times, Griffen pointed out, Hammond still persisted in that conduct. He asked the justices for the speedy and vigorous execution of the laws.<sup>65</sup>

The grand jury presented Hammond for “unlawfully Cohabiting and Committing fowle and abseen [*sic*] Accons in bed with Jane Griffen wife of Enoch Griffen.” On the basis of this presentment Worthington drew up a bill of indictment in which he alleged that in contempt and derision of the laws against adultery and fornication as well as of the “good and Godly . . . Divines and Majestrates” who reproved him Hammond “Threatned and abused them that Did Admonish him to Leave of[f] his wicked Course of life in accompanying with Joane the wife of Enoch Griffen,” and that on or about 30 October 1705 “and at sundry other times After he had been forewarned by the Minister and Vestry of All hollows parish” he had unlawfully cohabited with and still did “unlawfully Cohabitt with and frequent the Company of Jane the wife of Enoch Griffen not only in his own house” but also in Griffen’s house. All of those “Adulterous Actions and [that] Desolute Manner of liveing,” Worthington concluded, Hammond seemed “publickly to Maintaine and Defend.”

According to the depositions of Griffen and eight others,<sup>66</sup> Joan Griffen and Edward Hammond had been naked in bed together several times performing “unseemly Actions” that Joan Ford called “Carnel Coppilation.” Once when Joan Griffen flaunted<sup>67</sup> herself at Joan Ford Mrs. Ford asked her what she and Hammond had been doing the night before, and Joan Griffen replied that it was the dogs under the

house that Joan Ford had heard. When Griffen complained to Hammond, Hammond threatened “to Cut his Ears Close to his head, and Cutt his Members off,” to shoot him with no more qualms than he would have shooting a dog, and to have his Negroes strip Griffen and tie him to the well post and whip him to death or cut his heart out. He had often beaten and kicked Griffen until he bled, once had disabled him for some time by kicking him in the groin, had knocked him down, and had hit him over the head with a “roundlett,” which is “a small barrel or cask,”<sup>68</sup> in Griffen’s own house. He had threatened to stick Griffen with a fork<sup>69</sup> and had wondered why Joan Griffen had not done it herself, and he had threatened to slap Griffen’s face if he called Joan Griffen a whore again. On one occasion when Griffen tried to kiss his own wife Hammond knocked him down. Once when Hammond was abusing Griffen Joan Griffen told Joan Ford that “it was good Enough for him if it were ten times Worse.”

On one occasion when Hammond and Joan Griffen went to bed together in Griffen’s house and Griffen asked Hammond to get out of bed so that he could go to bed with his wife himself Hammond told him that if he tried to come to bed he would break his arm or leg and that he should sleep in his chimney corner with his Negro. On another occasion Hammond and Joan Griffen locked Griffen out of his own house, and when he tried to get in Hammond told him to sleep under the poplar tree or to “goe to his Negro woman.” Griffen slept that night at a neighbor’s house. On still another occasion Griffen returned home to find the door of his house broken down, Hammond in his bed, and Joan Griffen out in the field working. Hammond had also threatened to hire a house for Joan Griffen to live in so that she could “goe to it when shee pleased,” and he had threatened to break the head of Robert Keith, the minister, when Keith admonished him.



John Grear claimed to have seen Griffen, Hammond, and Joan Griffen in bed together, with Joan Griffen in the middle, and Joan Griffen had also spent some time at Hammond's place at Newport. Hammond had told Griffen that "if he would . . . put his hornes into his pocket" he could live like a gentleman.<sup>70</sup>

Once when Joan Ford met Hammond coming naked through Wallops Neck Creek he offered to carry her through the creek on his back. When Joan Ford refused Hammond's offer "he laid hold upon her and tumbled her upon y<sup>e</sup> Marish [marsh] inso Much y<sup>l</sup> shee at last Called him [a] rogue." She told him that she had waited too long on him and his strumpet and had never been paid, and he replied that "if he had y<sup>e</sup> sweetness he would pay y<sup>e</sup> fidler."

Besides all of that, Hammond had also taken two of Griffen's mares for his own use. He did not fear prosecution, he said, because "for a Small sume of Money he Could get the favour" of the court and the grand jury.<sup>71</sup>

After the grand jurors returned the indictment a true bill and all of the depositions were read in court and "sworn to and Deliberately Weighed and Considered," the justices charged the petit jury. The petit jury found Hammond guilty, and the justices fined him twelve hundred pounds of tobacco. They also required him to give security of twenty pounds sterling, apparently for his good behavior. George Day became his surety of ten pounds sterling.

That, however, was not enough for Griffen. After he swore that he was afraid of Hammond — he was "Continually in Dread and fear of his life" —, the justices required Hammond to give security of one hundred pounds sterling, with one surety of fifty pounds sterling, to guarantee his good behavior indefinitely. George Day again became his surety.<sup>72</sup>

Hammond got a writ of error to take the case to the provincial court, where in

September of 1706 Macnemara listed seven reasons why the provincial justices should set aside the judgment of the Somerset County court.<sup>73</sup> First, he argued, the indictment did not state Hammond's *alias dictus*. That is, it did not include a second identification for him.<sup>74</sup> Second, the indictment did not state that Hammond had committed adultery before the minister and the vestrymen admonished him. Third, the indictment did not mention by name the minister and vestrymen who had admonished Hammond. Fourth, the indictment did not state that Jane Griffen was a lewd woman or that Hammond lewdly frequented her company. Fifth, Hammond was tried at the same court at which the grand jury returned the indictment against him.<sup>75</sup> Sixth, the justices in giving judgment had not entered a *capiatur* against him. That is, they had not ordered that Hammond be held in custody until he paid his fine.<sup>76</sup> Finally, the judgment that the justices gave against Hammond was that he give security for twelve hundred pounds of tobacco for committing fornication, and that judgment was neither agreeable to the indictment nor warranted by law.

Macnemara's last point must mean that Hammond was not married and that therefore while Joan Griffen could be guilty of adultery he could be guilty only of fornication,<sup>77</sup> for which the fine was only six hundred pounds of tobacco rather than twelve hundred.<sup>78</sup> Worthington and the grand jury never did charge Hammond specifically with adultery but rather only with "adulterous Actions & Desolute manner of living"; the petit jury had found him guilty only "of the Indictment"; but the justices of Somerset County had fined him "According to Law Twelve hundred pounds of Tobacco for Committing adultery."

Macnemara asked "leave to Argue those errors, and Many more in the Record"<sup>79</sup> *ore tenus* — orally<sup>80</sup> —, and then asked the provincial justices to reverse the judgment against Hammond. Bladen, who as attorney general took over for Samuel

Worthington in the provincial court,<sup>81</sup> responded that neither in the record and proceedings nor in rendering judgment had the Somerset County court erred<sup>82</sup> and asked the provincial justices to affirm the judgment against Hammond. After both attorneys asked the justices to proceed to an examination of the record and process as well as the errors that Macnemara alleged, the justices, because they were “not Advised of . . . [their] Judgment,” continued the case to the next court, and at the provincial court for May of 1707 they did reverse the judgment of the Somerset County court.<sup>83</sup>

Bladen would try again. He immediately drew up another indictment, correcting some of Worthington’s errors, and sent it before the grand jury, but he still could not get it right.

In this indictment Bladen charged that “Edward Hamond of somersett County Planter otherwise Called Edward Hamond of [blank space] parish in the County at<sup>d</sup> Gentleman,” after he had been duly admonished on 20 August 1706 by Walter Evans, a churchwarden of All Hallows Parish in Somerset County, in that parish and county on 30 August 1706 as well as at various times since did “entertain and provide for” Jane Griffen, the wife of Enoch Griffen.<sup>84</sup>

The grand jurors returned the indictment a true bill, and after a petit jury found Hammond guilty and the justices asked him why they should not proceed to judgment on the verdict Macnemara argued that in two ways the indictment was insufficient in law. First, it did not identify the parish in which Hammond lived, and, second, it did not state that Joan Griffen, with whom Hammond was charged to have cohabited, was “a Lewd woman which if she were not Twas noe Crime” for Hammond to cohabit with her. Again the justices agreed with Macnemara, decided that the indictment “and the Matter therein Contained . . . [were] not sufficient in Law,”

quashed the indictment, and discharged Hammond “without Day.”<sup>85</sup> That meant that he would not have to appear later to answer the same indictment again,<sup>86</sup> and apparently Bladen gave up.<sup>87</sup>

At the provincial court for April of 1713 Macnemara got the conviction of Mary Lyon or Line for bastardy overturned because Thomas Vickers, the foreman of the grand jury at the Dorchester County court for March of 1710/11, had not endorsed the bill of indictment *billa vera* or “a true bill” but rather had only signed it, and he got a second a second bill of indictment against her for the same crime quashed for the same reason.

At the Dorchester County court for June of 1710 Mary Lyon gave security of twenty pounds sterling, with John Fleharty as her surety of ten pounds, to guarantee her appearance in November — at “the next Grand Jury Court” — to answer what might be objected against her and to guarantee her good behavior in the meantime. Since the records of Dorchester County for this period have not survived, there is no way to be sure that no grand jury had presented her, but, since the justices required her to appear at “the next Grand Jury Court,” apparently no grand jury had done anything in her case.

When Mary Lyon failed to appear at the November court and when Fleharty failed to produce her, “as by his . . . recognizance he was bound to doe,” the justices ordered the recognizance estreated, which means that they would begin prosecution for the recovery of twenty pounds sterling from Mary Lyon and ten pounds sterling from Fleharty, the amounts of the bonds,<sup>88</sup> and issued a writ of *scire facias*, which was the writ used for the forfeiture of recognizances<sup>89</sup> and by which the justices directed the sheriff, “by good and lawfull men of . . . [his] bailywick,” to notify Mary

Lyon that she should appear before the court for March of 1710/11, “if to her it should seem meet,” to show cause why the justices should not issue execution against her goods, chattels, lands, and tenements in the amount of twenty pounds sterling.<sup>90</sup>

On 13 March 1710/11, the day the March court opened, Roger Woolford, the sheriff, reported that he had notified Mary Lyon through Isaac Nicolls and John Bourke, two “honest & lawfull men of . . . [his] bailiwick,” that she should appear at that court.

At this court also John Kirke, the clerk of indictments, began proceedings against Mary Lyon, who is identified here as a spinstress, on two bills of indictment for bastardy. In the first bill he charged that in Great Choptank Parish on 20 March 1708/9 she bore a bastard child, and in the second he charged that in Great Choptank Parish on 20 March 1709/10 she also bore a bastard child. Either Kirke was alleging that Mary Lyon had two children born on exactly the same date one year apart or else he wanted to be sure that he got the birthday of her one alleged bastard child right. He might have been taking no chances that Mary Lyon would escape: if she had had only one child the court could quash the irrelevant indictment.

Thomas Vickers, the foreman of the grand jury, signed both bills, but he did not endorse either of them *billa vera* or “A true bill.”

After Mary Lyon through her attorney, Nicholas Lowe, pleaded not guilty and asked for an imparlance to the next court the justices committed her to Woolford’s custody until she found security to guarantee her appearance at that court and to guarantee her good behavior in the meantime. Later she did give security of twenty pounds sterling, with John Fleharty and John Bourke as her sureties of ten pounds each.

When the Dorchester County court met on 12 June 1711 Kirke asked that Mary

Lyon respond to the writ of *scire facias*, but Nicholas Lowe produced a writ of *certiorari* to remove all proceedings against her to the provincial court. In this writ Mary Lyon turns out to be the wife of John Line (Lyon), mariner. The justices of Dorchester County had no choice but to honor the *certiorari*, and they ordered the proceedings against Mary Lyon transmitted to the provincial court.

At the provincial court for July of 1711 Thomas Bordley, who had got the *certiorari* for Mary Lyon, appeared for her,<sup>91</sup> and William Bladen, the attorney general, appeared for the queen. Through Bordley Mary Lyon imparled, as she did again in October of 1711 and April and July of 1712.

In October of 1712 the provincial justices ruled that unless Mary Lyon appeared at the next court and entered bond with two sureties “to stand and abide the Judgm<sup>t</sup> of the Court” on the indictments they would issue a writ of *procedendo*, by which they would order the Dorchester County court to proceed to judgment in the cases.<sup>92</sup> Bordley then asked for another imparlance.

At the provincial court for April of 1713 Mary Lyon appeared with Thomas Bordley and gave security of ten pounds sterling, with John Fleharty, a planter from Dorchester County, and William Jones of Talbot County as her sureties of five pounds sterling each, to guarantee “her standing and Abideing the Judgm<sup>t</sup> of the Court” on the two indictments against her and to guarantee also that she would not depart the court — leave the court’s jurisdiction — without its license and would be of good behavior in the meantime.

At this point Mary Lyon got a new lawyer. Through Thomas Macnemara she pleaded not guilty to the first indictment and put herself upon the country. After Bladen responded that she was guilty and asked that the issue “be Inquired into by the Country Likewise,” a petit jury found her guilty, but Macnemara moved for an

arrest of judgment because the indictment “and the matter therein Contained” were “not sufficient in Law for the Court . . . to proceed upon” to judgment. The justices agreed and ruled that since it appeared that the indictment “was never found by the grand Jurors by Endorseing it Billa Vera” Mary Lyon should be discharged from that indictment and pay her fees only.

Macnemara then argued that the second indictment similarly was “not sufficient in Law to Compell” Mary Lyon to answer it, and the justices decided that since that indictment too “was never found by the grand Jurors by Endorseing it Billa Vera” it should be quashed.<sup>93</sup> Without the records of Dorchester County there is no way to know whether Mary Lyon was prosecuted again for these alleged bastardies.

While the bills of indictment against Mary Lyon were still unsettled Macnemara was doing some good business in Baltimore County, where in March of 1712/13 the justices appointed him counsel for Anthony Drew, Mary Bond, Daniel Mackentoes, John Hatch, and George Freeland<sup>94</sup> after the grand jury at the Baltimore County court for November of 1712 presented Drew and Mary Bond for perjury, Mackentoes and Hatch for hog-theft, and Freeland for breach of the Sabbath.<sup>95</sup> When Drew, Mackentoes, Hatch, and Mary Bond appeared with Macnemara in March of 1712/13 he asked the justices to quash the presentments against them “for the uncertainty thereof.” The justices agreed and quashed the presentments.<sup>96</sup>

At this court Freeland, charged with the least serious crime, imparled, and in June the justices discharged him.<sup>97</sup> The other defendants, however, were not out of the woods yet. In June Mackentoes was sworn to the grand jury, apparently against Hatch, with the condition that he would not have to accuse himself, but the grand jury brought in the bill of indictment against Hatch *ignoramus*.<sup>98</sup> The grand jury did, however, bring in true bills against Anthony Drew and Mary Bond,<sup>99</sup> each of whom

had to give security of ten pounds sterling, with two sureties of five pounds sterling each, to guarantee their appearance at the next court. Macnemara and John Stokes, another gentleman, became Drew's sureties, while Mary Bond's sureties were Thomas Bond and Mary Bond's husband John.<sup>100</sup>

At the Baltimore County court for August of 1713 the justices quashed the indictment against Mary Bond,<sup>101</sup> and with Macnemara acting as Drew's attorney a petit jury found him not guilty of the perjury.<sup>102</sup>

If Thomas Macnemara contributed to the educations of Joshua Cecil, William Bladen, Samuel Worthington, and John Kirke, at the provincial court for October of 1713 he performed the same service for Daniel Dulany, the clerk of indictments of Charles County, when he taught Dulany that he could not prosecute a defendant charged with horse-theft on a bill of indictment that he had not bothered to send before a grand jury.

On 14 November 1710 the grand jurors for Charles County after hearing seven witnesses presented John Blee, a planter, for stealing a mare colt from Edward Philpott "at Wiccocomoco In or about the month of ffebruary [*sic*] Last Past."<sup>103</sup> The justices required Blee to enter a recognizance of twenty pounds sterling to guarantee that he would appear at the Charles County court for March of 1710/11, not depart that court without its license, and be of good behavior in the meantime. Thomas Lomax and John Mellor, two planters from Charles County, became his sureties of ten pounds sterling each.<sup>104</sup>

When Blee appeared before the Charles County court on 13 March 1710/11, the first day of the court,<sup>105</sup> in the custody of the sheriff, Joseph Manning, the bill of indictment that Dulany had drawn up on the basis of the presentment against him was



read to him. Dulany charged in the conventional wording of the indictment for horse-theft that in William and Mary Parish in Charles County on the last day of February in the eighth year of the reign of the queen — 1709/10 — Blee, “the ffear of God before his Eyes not haveing but being seduced by the Instigacon of the Devil,” stole one black mare worth six hundred pounds of tobacco from Philpott, another planter from Charles County. No endorsement of true bill or *billa vera* appears on the bill of indictment, and the foreman of the grand jury, John Parnham, did not sign it. Dulany did sign it as clerk of indictments.<sup>106</sup>

Blee pleaded not guilty and asked for a trial by jury. The petit jury decided that he was guilty, but the justices, because they were not advised of their judgment, continued the case until the next day and turned Blee back over to Manning. When the justices the next day asked Blee whether he had “any Thing for himselfe . . . to Say why the Court” should not proceed to judgment and execution against him, he said nothing that he had not already said. The justices then ordered that he be taken to the whipping post and, “being naked from the wast [*sic*] upwards,” receive twelve stripes “well Laid on, upon his Bare back” and that after the whipping he “be putt upon the Pillory for the full Space of half an hour.” Finally, the justices ordered that since it seemed to them that the mare was worth five hundred pounds of tobacco rather than six Blee should pay Philpott two thousand pounds of tobacco fourfold according to the act of the assembly.<sup>107</sup>

Apparently Blee was whipped and pilloried,<sup>108</sup> but on 10 November 1712, twenty months after his trial and punishment, Macnemara sued out a writ of error by which Edward Lloyd, as president of the council and chancellor of the province<sup>109</sup> ordered the justices of Charles County to send the record of the case against Blee to the provincial court because of “Manifest Error” in the prosecution against him. Blee

presented the writ of error to the Charles County court in March of 1712/13.<sup>110</sup> The justices ordered the clerk, John Rogers,<sup>111</sup> to send a copy of the record to the provincial court, and the provincial justices considered the case at their session for April of 1713.

Macnemara appeared for Blee and argued that there were at least six errors in the prosecution of the case against him. He pointed out in the first place that the indictment was not endorsed by the foreman or anyone else on the grand jury “to be a true bill.” Second, he argued that the indictment did not state that it was presented by the oaths of the grand jurors. Third, the record did not state that “the Justices were of the peace” in Charles County and were assigned to preserve the peace and “to hear and determine” “divers felonies Trespasses and other misdemeanor[s]” committed in Charles County. Fourth, Blee was tried on the same day the indictment against him was returned. Fifth, the record did not state on what day judgment was given. Finally, the justices of Charles County had sentenced Blee to be whipped and pilloried when the judgment should have been that he be discharged.

Macnemara requested that because of those errors as well as others in the record and proceedings against Blee the judgment against him should be “reversed Annihilated and altogether held for nought.” Bladen responded that there were no errors either in the record and proceedings or in the rendering of the judgment against Blee and asked the provincial justices to affirm the judgment.

Since the provincial justices were not advised of their judgment, they continued the case to July, and in July they ordered that a writ of diminution issue returnable in October.

By the writ of diminution, which is dated 18 July 1713, the provincial justices ordered that since they were not satisfied that they had received the full record of the

case but thought that the record they had might be “Deminished,” the justices of Charles County transmit the full record to the provincial court for October of 1713 “without any Diminution whatsoever” so that speedy justice could be done in the case.<sup>112</sup> Apparently the record that John Rogers had sent to the provincial court made the proceedings against Blee appear so faulty that the justices could not believe that he had sent the complete record.

On 13 October 1713 the provincial justices considered the case once more. The justices of Charles County certified that they had sent the record of the case without any diminution. Since the provincial justices had supposed that the record was incomplete because the bill of indictment was not endorsed, they also certified that the bill “was not found by the Grand Inquest for the said County but that the same bill was Drawn on the Psentment” and that Blee had been convicted on that bill.

Thus Daniel Dulany had not bothered to send the bill of indictment before the grand jury at the Charles County court for March of 1710/11. He had simply drawn up the bill of indictment on the basis of the presentment that the grand jury returned in November and had prosecuted Blee on that bill. And the justices of Charles County had allowed him to do it, even though the prosecution of theft required an indictment by a grand jury.<sup>113</sup>

When the provincial justices discovered that Dulany had not sent the bill of indictment against Blee before a grand jury they ordered that “all and singular the Premises being by the Court here fully seen heard and understood and Mature Deliberation being thereupon had” the judgment against Blee “for the Errors Afd Assigned And others in the record and prosesse Afd being be Reversed Annulled and altogether held for none” and that all things that Blee had lost by that judgment be restored to him.<sup>114</sup>

For John Blee the reversal would not revoke the pain and humiliation of being whipped and pilloried at the Charles County court for March of 1710/11, but it might restore his reputation, and at least he would not have to pay Philpott the two thousand pounds of tobacco fourfold.

At their first court after the provincial justices reversed the judgment against Blee — in November of 1713 — the justices of Charles County fined Dulany five hundred pounds of tobacco for “not attending on his duty,” but on Dulany’s request the justices remitted the fine. The record does not reveal whether the fine had anything to do with Dulany’s ignorance or carelessness in Blee’s case.<sup>115</sup>

At the Prince George’s County court for March of 1716 Macnemara successfully defended John Queen or Quinn in a prosecution for an alleged hog-theft. After the grand jurors at the Prince George’s County court for March of 1714/15 presented Quinn and Henry Robins for stealing a hog the justices required them to give security of twenty pounds sterling each to guarantee their appearance at the June court, to abide by the judgment of that court, and to behave themselves in the meantime. Jeremiah Macnew and Cornelius Kelly became sureties of ten pounds sterling each for each defendant.<sup>116</sup>

The justices summoned John Hawkins and Thomas Robins to testify against Quinn and Henry Robins at the June court,<sup>117</sup> but what happened at that court does not appear.<sup>118</sup> Apparently both men appeared and imparled.

The justices renewed the subpoenas to the August court,<sup>119</sup> where both Robins and Quinn appeared, must have imparled again, and gave security of twenty pounds sterling each to guarantee their appearance at the November court. This time the justices required each defendant to find only one surety of ten pounds sterling. Thomas Robins became Henry Robins’ surety, and James somebody — the last name

is not clear — became surety for Quinn.<sup>120</sup>

The justices summoned Thomas Plunkett, Robert Cloyd or Lloyd, John Hawkins, and Thomas Robins to testify in the case in November,<sup>121</sup> but again the defendants must have imparled, and the justices renewed the subpoenas to their court for March of 1716.<sup>122</sup> At that court the case was finally settled. The justices ruled that since no evidences appeared against Robins the clerk of indictments, James Haddock, prosecute him no further and discharged him from his recognizance. Robins did have to pay his fees.<sup>123</sup>

For Quinn life was more difficult. Haddock had drawn up a bill of indictment in which he charged that in Piscataway Hundred on 11 November 1714 Quinn, whom Haddock identified both as a planter and as a laborer, stole “one Large fat hogg” worth 350 pounds of tobacco from John Fendall. With Macnemara acting as his attorney Quinn pleaded not guilty, and after a petit jury found him not guilty the justices discharged him “without Day.”<sup>124</sup>

Haddock’s bill of indictment against Quinn was not endorsed “A true bill” or *billa vera* and was not signed by Benjamin Berry, the foreman of the grand jury that presented Robins and Quinn, or the foreman of any other grand jury. It was signed only by James Haddock. Haddock must not have sent the bill of indictment before any grand jury, though, again, prosecutions for theft were supposed to be only on indictments that grand juries *had* returned.<sup>125</sup> Nor is there any evidence that the presentment was endorsed and signed. The record there is very stark: “John Queen [*sic*] and Henry Robins for steeling [*sic*] a Hog.”<sup>126</sup>

At the provincial court for September of 1716 Macnemara might have had another lesson for John Kirke. At the Dorchester County court for June of 1716 Kirke sent before the grand jury a bill of indictment in which he charged that “some-

time” in January of 1715/16 Michael Fletcher, a merchant from Great Choptank Parish, stole six hogs worth four hundred pounds of tobacco from Lawrence Haukit or Hankit and cut new marks in their ears. The grand jury returned the indictment *billa vera*, but Fletcher produced a *certiorari* that Macnemara had sued out to remove the case to the provincial court, where in September Bladen entered a *non pros* against Fletcher and the justices discharged him. What argument Macnemara used in the provincial court does not appear, but possibly Kirke’s failure to include the exact date of the alleged theft was important.<sup>127</sup> Again in the absence of the records of Dorchester County it is impossible to know whether Fletcher was prosecuted again for the alleged theft.

Seven months later Macnemara extended his generosity to Thomas Bowne, the clerk of indictments of Kent County. At the Kent County court for March of 1713/14 the grand jury presented Dominick Kenslagh for assaulting James Harris, the sheriff of the county. On the basis of that presentment Bowne drew up a bill of indictment in which he charged that in St. Paul’s Parish in Kent County on 7 November in the twelfth year of the reign of the queen — 1713 — “by the Instigation of the Devill and of his mere Mallice” Kenslagh assaulted Harris in the execution of his office and “then and there did Evill Intreat and other Enormities to him . . . did and perpetrated.” The grand jury returned the bill *billa vera*, but in June Kenslagh produced a *certiorari* that Macnemara had sued out to remove the case to the provincial court.<sup>128</sup>

At the provincial court for July of 1714 William Bladen as attorney general replaced Thomas Bowne as prosecutor, while Macnemara and Wornell Hunt appeared as counsel for Kenslagh and imparled. In September of 1714, in April and September of 1715, and in May, July, and September of 1716 the justices continued the case further.

Finally at the provincial court for April of 1717 the case was settled. Macnemara, who was now appearing alone for Kenslagh,<sup>129</sup> argued that the indictment against him was not sufficient in law to require him to respond to it. Bladen's response is not noted, but the justices agreed with Macnemara, quashed the indictment, and discharged Kenslagh with his fees. Since he could not give security to guarantee the payment of those fees, however, the justices committed him to the custody of the sheriff of Anne Arundel County.<sup>130</sup> What was wrong with the indictment does not appear.

While this case was still moving from session to session Kenslagh was also suing James Harris for one hundred pounds sterling for false imprisonment, but here Macnemara was less successful. Possibly convinced — or convinced by Macnemara — that the best defense is a good offense, Kenslagh at the provincial court for April of 1714, the first session of that court after the beginning of the criminal proceedings against him in the Kent County court in March of 1713/14, he charged through Macnemara that in Kent County on 7 November 1713 Harris “took Imprisoned and Evilly Intreated and other harmes to him did” to his great damage. For Harris Thomas Bordley imparled to the next court, where in July, the court at which Kenslagh first imparled in the criminal action against him, he argued that Kenslagh had charged “Nothing Positively” against Harris but had only recited the “takeing Imprisoning and Evilly intreating Supposed to be done” by Harris and did not affirm that Harris had ever done any such things. Nor had he affirmed anything that Harris could make an issue of. Therefore, Bordley concluded, Kenslagh's declaration was insufficient and uncertain and wanted form. When Kenslagh defaulted the justices ruled that his sureties be in mercy,<sup>131</sup> that Harris go without day, and that Kenslagh pay him 753 pounds of tobacco for his costs.<sup>132</sup>

Kenslagh was not finished. In September of 1714, at the next provincial court and the same session at which he imparled for the second time in the criminal action against him, he alleged again through Macnemara that in Kent County on 7 November 1713 Harris “took Imprisoned and Evilly Intreated and other harmes to him did” to his great damage. Again he was suing Harris for one hundred pounds sterling. For Harris, Thomas Bordley imparled to the provincial court for April of 1715, when he imparled again, as he did again in September of 1715 and May and July of 1716.

Finally in September of 1716, seven months before the provincial justices would quash the indictment against Kenslagh, the civil case was settled. Bordley argued that Kenslagh’s action against Harris was not justified because on 7 November 1713 Kenslagh assaulted Harris and would have beaten, wounded, and evilly treated him if Harris had not defended himself. If Kenslagh suffered any damage or evil it was the result of his own assault on Harris. On Harris’s complaint that Kenslagh had assaulted him in the execution of his office as sheriff, William Pearce, William Pott, and Michael Miller, three justices of Kent County, issued a warrant directing him to arrest Kenslagh and “him Safely to keep” so that he would appear at the Kent County court for March of 1713/14 to answer the complaint against him. Harris did arrest Kenslagh on 7 November 1713, and because Kenslagh did not offer to find security to guarantee his appearance at that court Harris did imprison him for five days, when Kenslagh finally provided the security. Bordley asked for judgment in favor of Harris.

Macnemara responded that nothing that Bordley had said should preclude Kenslagh’s action against Harris because Harris had imprisoned Kenslagh without any such cause as Bordley claimed. Macnemara asked for a trial by jury; Bordley agreed; and the jury decided that Harris did not imprison Kenslagh “of his Proper



Injury without such Cause” as he had alleged in his pleading. With that the justices ruled that Kenslagh receive no damages “but be in Mercy for his false Clammour” and that he pay Harris an unstated amount for his costs.<sup>133</sup>

While Macnemara might have done Kenslagh good service by getting the indictment against him quashed, he did him no favor by prosecuting the suits against Harris. Committed in April of 1717 because he was unable to pay his fees on the criminal prosecution, and possibly as early as September of 1716 for the fees that he owed Harris from the civil action, in May of 1718 he was still — or again — in jail.

Kenslagh was not one of the more prosperous people of the province. On 27 October 1709 the delegates read and referred for further consideration a petition in which Kenslagh claimed that the justices of Kent County not only had denied him the benefit of the act for the relief of poor debtors<sup>134</sup> but also had “used several reproachful Words against the Act and the Makers thereof.” On the thirty-first they ordered Nathaniel Hynson, the sheriff of Kent County,<sup>135</sup> to bring the living justices of oyer and terminer of Kent County<sup>136</sup> before the lower house without delay to answer Kenslagh’s complaint. They also ordered Hynson to summon James Smith, the clerk of Kent County, Thomas Jackson, William Mackey, John Willinger, and any other witnesses whom Kenslagh might name.

After hearing the justices and Kenslagh’s witnesses a week later the delegates ordered the justices immediately to allow Kenslagh the benefit of the act for the relief of poor debtors, censured Edward Blay for his “opprobrious Language,” acquitted the other four justices, and ordered that Blay “acknowledge his Fault at the Bar” of the house, beg pardon for his offense, and pay Hynson five hundred pounds of tobacco for bringing Kenslagh and his witnesses to Annapolis, pay each of the five witnesses 360 pounds of tobacco, and pay William Taylard, the clerk of the lower house, one

pound, apparently sterling, Richard Young, the “Serjeant Attend’,” ten shillings, and Moses Adney, the door-keeper, five shillings. Blay did acknowledge his offense, begged the delegates’ pardon, and left.<sup>137</sup>

Since in 1709 the act for the relief of poor debtors was suspended and was never revived,<sup>138</sup> Kenslagh’s release from jail in 1718 required a special act of the assembly. On 6 May the upper house referred his petition to the delegates, who that same day ordered that a bill be brought in for his relief and, still on that same day, passed on its first and second readings a bill for the relief not only of Kenslagh but also of Mary Creagh, Hester (Esther) Smith, and Hesther (Esther) Oldfield and sent it to the upper house.<sup>139</sup>

The next day the unsympathetic members of the upper house responded that they considered it unreasonable that Kenslagh and Mary Creagh “should be Discharged from any Other Debts” than those for which they were already imprisoned but that it was reasonable that the sheriff should be compensated for finding the four prisoners “Victualls since their Imprisonment,” which they left the delegates to consider.<sup>140</sup> The delegates responded that since Kenslagh and Mary Creagh had nothing with which to pay their debts discharging them only from those for which they were in prison already would result only in their being arrested again and therefore would be only “a Partiall Proceeding and an Apparent Injustice to those at whose Suit” they were already in custody. As to the sheriff’s fees, the delegates were unwilling to burden the public with them, since that might encourage other sheriffs in the future to claim such fees when the legislature discharged debtors from prison. They observed further that it was no greater injustice to the sheriff to lose his fees than for the creditors to lose their debts.<sup>141</sup>

The upper house accepted the bill but earnestly recommended that the delegates

consider some recompense for the jailer “for his Trouble & Charge in victualling those who have been kept in Close Custody, which . . . [was] Intirely at his own Charge & Risk.”<sup>142</sup> The delegates apparently ignored the suggestion, and the bill did pass.<sup>143</sup>

Clearly Dominick Kenslagh, already embroiled in a criminal action, was in no financial position to risk losing a suit against Harris unless he thought he had a very good case. It was up to Macnemara as his attorney to help him assess his chances, but only Kenslagh suffered for their miscalculation.

In 1717 and 1718 Macnemara enjoyed three more successes at the Baltimore County court. At the court for November of 1717 the grand jury returned an indictment in which it charged that in St. Penitie Hundred on 20 February 1716/17 Thomas Morris, a planter, stole one horse bell worth three shillings sterling from Paul Horner, but with Macnemara representing him a petit jury found him not guilty.<sup>144</sup> At the same court Macnemara was the attorney for George Middleton, a gentleman and the clerk of Baltimore County,<sup>145</sup> when a petit jury that included some of the same petit jurors who acquitted Morris acquitted him of “Extortiously & Injuriously” demanding from Archibald Rolle fifty pounds of tobacco for five summonses against Samuel Smith “When in truth he Never Ordered them to be Isued [*sic*].” No foreman of any grand jury signed the bill.<sup>146</sup>

At the Baltimore County court for June of 1718 Macnemara was also the attorney for Henry Donahue, a planter, who was never tried on a bill of indictment in which he was charged with stealing a hog worth forty shillings current money from an unknown person. The prosecutor in this case is not named, nor did the foreman of any grand jury sign the bill. When nobody came forward when the crier called out

three times the proclamation that if any one had anything to say against Donahue he should speak the justices discharged him from the indictment.<sup>147</sup>

In light of the proceedings against John Blee it appears less than likely that Daniel Dulany “had acquired from his generous patron [Colonel George Plater] a solid grounding in the law,”<sup>148</sup> and by March of 1710/11, when he prosecuted Blee on the bill of indictment that he had not bothered to send before the grand jury, he had not been practicing law long enough to have gained much knowledge from experience, either. He was admitted to practice in the Charles County court only in August of 1709,<sup>149</sup> and already at the court for November of 1710 he became clerk of indictments.<sup>150</sup> At the same time he became clerk of indictments of St. Mary’s County.<sup>151</sup> He could get those positions as early as he did only because few lawyers wanted them: there was not much money in them.<sup>152</sup>

For a twenty-five-year-old<sup>153</sup> barely embarked on his legal career, however, becoming clerk of indictments of two counties was not a bad start. If nothing more, it would announce to the world that Daniel Dulany was a young man on the make, that unlike Thomas Macnemara he wanted to be on the side of the powerful against the weak.

Yet obviously Daniel Dulany was not the only prosecutor who incorrectly tried a defendant for theft on a bill of indictment that no grand jury had ever considered. When he prosecuted John Blee for stealing the mare colt from Edward Philpott he was, in fact, only following the precedent of William Stone, his predecessor as clerk of indictments of Charles County.

On 14 March 1709/10 the grand jury at the Charles County court presented

George Godfrey Sr. for stealing a hog belonging to Phillip Hoskins “About [the] Last [of] September was Twelve months.”<sup>154</sup> The justices ordered the sheriff, Joseph Manning, to have Godfrey before the June court, and when the justices there asked him “how he would acquit himselfe of the ffellony” he asked for counsel. The court appointed Cornelius White as his attorney, and White asked for an imparlance to the August court. In August Godfrey imparled again, and in November, the same court at which the grand jurors first presented John Blee and at which Daniel Dulany became clerk of indictments, Stone had a bill of indictment ready.

Stone charged that on or about the last day of September 1708 Godfrey, who was a planter, “ffelloniously Did, Kill steale take and Carry away” one barrow hog<sup>155</sup> worth four hundred pounds of tobacco from Phillip Hoskins.<sup>156</sup> Stone did not send the bill before the grand jury: it was not endorsed *billa vera* or “a true bill,” and it was not signed by any foreman. It was signed only by William Stone.

When the justices asked Godfrey how he would plead to the bill of indictment White asked them to quash the bill because of its “Insufficiency . . . and . . . Want of forme.” The justices agreed with White and quashed the bill, not primarily because Stone failed to send it before the grand jury but rather “for want of forme, Pticularly for Want of the Words Vi et armis,” and discharged Godfrey with his fees.<sup>157</sup>

Godfrey, however, still was not off the hook. The grand jurors immediately presented him again for stealing a hog from Phillip Hoskins “about Two Years Agoe.”<sup>158</sup> Godfrey had to give bond of twenty pounds sterling to guarantee his appearance at the court for March of 1710/11, and John Griffiths, a planter from Charles County, became his surety of ten pounds sterling.<sup>159</sup>

Godfrey was not tried in March, but when he appeared on his recognizance in June of 1711 Dulany, who apparently had not learned anything from William Stone’s

failure, read to him a bill of indictment that, like Stone before him, he had not bothered to send before any grand jury and in which he charged that on 30 September of the seventh year of the reign of the queen — 1708 — Godfrey, whom Dulany identified both as a planter and as a carpenter, stole one hog worth two hundred pounds of tobacco from Phillip Hoskins. Godfrey, acting for himself this time, pleaded not guilty, and after a petit jury found him not guilty the justices discharged him.<sup>160</sup>

Since the petit jury found Godfrey not guilty, Dulany's failure to send the second bill of indictment before a grand jury probably is not quite as crucial as it would have been if the petit jury had found him guilty. If he *had* sent the bill before a grand jury, however, the grand jury might have returned it *ignoramus*, Godfrey might not have been tried at all, and thus he might have been spared not only the anxiety of a trial but also the additional expense.

What might have misled William Stone and Daniel Dulany, as well as William Bladen in the case against Christopher Vernon and James Haddock in the case against John Quinn,<sup>161</sup> is that while at least after 1698 a theft could *legally* be prosecuted only on an indictment that a grand jury had returned,<sup>162</sup> prosecutions for thefts on the basis of bills of indictments that prosecutors had not sent before any grand juries were not unusual. Thomas Macnemara, in Bladen's effort to prosecute Christopher Vernon, appears to have been the first attorney to protest such a procedure — if that was in fact his argument —, and thus once again he must not have endeared himself to authority. As a defense attorney before he became attorney general Bladen himself in 1699, 1700, and 1704 missed three opportunities to protest this illegality;<sup>163</sup> in 1708 one of Wornell Hunt's arguments in getting James Miller's conviction for theft overturned was that it did not appear from the record that any grand jury had

indicted Miller,<sup>164</sup> and in 1713 Macnemara used that as one of his arguments in getting John Blee's conviction overturned.

What all of this indicates is that unless the defendant had an attorney who had sufficient knowledge and energy to challenge the justices they could do pretty much whatever they pleased. They were not lawyers themselves, and they depended on the attorney general or the clerk of indictments to guide them.<sup>165</sup>

Another source of confusion for William Stone and Daniel Dulany might have been that the assembly did permit the prosecution of such minor misdemeanors as assault and bastardy on bills of indictment that the clerks of indictments had not sent before any grand juries but that they had drawn up on the basis of presentments by grand juries.<sup>166</sup> Such a bill of indictment was not endorsed *billa vera* or "A true bill" or signed by the foreman of any grand jury but rather was signed only by the clerk of indictments himself, although often the foreman of a previous grand jury had endorsed the presentment *billa vera* or "a true bill" and had signed it.<sup>167</sup>

Drawing up indictments in such cases was completely unnecessary, since defendants whom grand juries presented for these misdemeanors could be prosecuted on the presentments alone. But there was profit in it for the clerks of indictments. The assembly actually invited the clerks of indictments to draw up bills of indictment when they could have prosecuted on presentments when in 1704 it provided that if a defendant confessed or submitted to the court on a presentment the clerk of indictments would receive one hundred pounds of tobacco, while if the clerk of indictments drew up a bill of indictment or if the defendant pleaded not guilty and put himself upon the country he would receive twice that amount.<sup>168</sup> And the clerk of the county court still received eight pounds of tobacco per side for every bill of indictment he wrote up.<sup>169</sup>

Thus both the clerk of indictments and the county clerk made more money when the clerk of indictments drew up and the county clerk wrote up a bill of indictment in a case that the clerk of indictments could have prosecuted on the presentment. Here was simply one more way that the authority of eighteenth-century Maryland found to increase the income of the functionaries of the ruling class at the expense of the less fortunate.

In 1708 the assembly withdrew this boon for the clerk of indictments when it provided that for any indictment, presentment, or information the clerk of indictments would receive one hundred pounds of tobacco “and no more.”<sup>170</sup> Thus when a grand jury presented a defendant the clerk of indictments gained nothing by writing up a bill of indictment but might as well prosecute on the presentment.

In 1715 the assembly doubled the fee of the clerk of indictments if the defendant asked for a trial on either a presentment or a bill of indictment. It provided that if the defendant confessed or submitted to the court on a presentment the clerk of indictments would receive one hundred pounds of tobacco but would receive two hundred pounds of tobacco if he asked for a trial by jury and that if the clerk of indictments drew up a bill of indictment *and* the defendant asked for a trial by jury he would also receive two hundred pounds of tobacco.<sup>171</sup> Thus it would do no good for the clerk of indictments to draw up a bill of indictment if he could prosecute on the presentment, since his fee depended not on the existence of the bill of indictment but rather solely on the decision of the defendant. If the defendant pleaded guilty either to a presentment or to an indictment the clerk of indictments received one hundred pounds of tobacco, while if the defendant asked for a trial by jury on either procedure the clerk of indictments received two hundred pounds of tobacco.

The clerks of indictments, however, continued to increase their incomes by



drawing up frivolous bills of indictment for which they had so little evidence that the grand juries were unlikely to return them true bills but for each of which the clerks of indictments would still receive the one hundred pounds of tobacco. By 1720 the delegates were tired of these gratuitous charges. In October the Committee of Aggrievances of the lower house reported that it was a great grievance that the clerk of indictments received a fee “for drawing [up] an Indictment when no Bill . . . [was] found by the Grand Jury.” The delegates agreed and recommended the elimination of the fee.<sup>172</sup>

The members of the upper house were not sympathetic. The fee was necessary, they thought, to encourage competent lawyers to become clerks of indictments. The attorney general, Thomas Bordley,<sup>173</sup> had informed them that he had received complaints from several counties that malefactors frequently went unpunished because the clerks of indictments did not prosecute them properly because of their “Incapacities.” They were further informed that the most capable attorneys absolutely refused to serve as clerks of indictments “for want of a Reward Suitable to their Services.” Only young and inexperienced attorneys were willing to accept that office, which they did “Chiefly . . . as an Introduction to further business.” If the members of the upper house agreed with the delegates, therefore, the inevitable consequence would be to encourage offenders, who would even more easily escape punishment because of the lack of prosecutors who understood the law. That, the members of the upper house concluded, would be a much greater grievance than the fees of the clerks of indictments.<sup>174</sup>

Thus nothing was done in 1720, but two years later the assembly satisfied the delegates’ concern when it provided that in the future no attorney general or clerk of indictments could send any bill of indictment before a grand jury without an express

order from the governor or from the court at which the prosecution would occur, or one of the justices of that court, unless the suspect had been bound over to that court or the grand jurors had already presented him “of their own Knowledge.”<sup>175</sup>

If Thomas Macnemara was a stickler for due process, he found Maryland a fertile ground for his talents. During the first two decades of the eighteenth century in Maryland the indifference toward the proper forms of law was epidemic, and in the fourteen criminal cases that came before the provincial justices on writs of error from 1699 through 1717 they reversed the county courts ten times, upheld the county court once, and reversed the assize justices once. Two cases were abated by the death of the one defendant.<sup>176</sup>

The small number of writs of error in criminal cases is no evidence that the county justices were careful about due process. More probably it indicates that usually the convicted defendant either did not know enough about procedure to realize that something was wrong, or that he was so demoralized that he considered his best course to be to accept his unjust punishment and get on with his already difficult life, or that even if he did think that he had a case and would have liked to put a lawyer on it he dared not risk the additional fees that further proceedings would cost him. Often too the convicted defendants were servants or slaves, who usually were not able to do much about anything.

Most violations of due process never got beyond the culpable courts, as when at the Prince George’s County court for August of 1705 James Haddock prosecuted “John Rayes woman” for bastardy on a bill of indictment in which he did not identify her by name but rather only left a space for it.<sup>177</sup> “John Rayes woman” received fifteen lashes “on her bare back well Laid on” after she confessed to bearing a bastard

and named John Raye the father. The bill was not endorsed *billa vera* or signed by the foreman of the grand jury, but was signed only “James Haddock Clke of Indictm<sup>ts</sup>,” although when the grand jury at the Prince George’s County court for June of 1705 presented the woman the foreman, Paul Bewsey, did sign the presentment. Since Raye himself was the father of the child the justices ruled that the disgrace of his house “twas paid in the hole,” and the woman did not have to serve him any additional time.<sup>178</sup>

At the Prince George’s County court for September of 1705 the same thing happened to a servant of Nicholas Rhodes. After the grand jury in June of 1705 presented the woman without naming her, Haddock drew up a bill of indictment in which he did not name her and that he did not send before the grand jury. At the September court the woman confessed to having a bastard child but would not name the father, and the justices sentenced her to thirty lashes. After Rhodes gave security to guarantee the payment of her fees the justices ordered that she serve him an additional twelve months to reimburse him for those costs and for the disgrace of his house. In the heading of the case the woman is identified only as “Roads Woman.”<sup>179</sup>

In the case of Edward Diggs’ Negro in 1709 Haddock not only failed to name the defendant but also omitted the date of his alleged crime, which was a further violation of due process.<sup>180</sup> At the Prince George’s County court for June of 1709 the grand jury presented Diggs’ unnamed Negro for working on the Sabbath. James Beall, the foreman of the grand jury, endorsed the presentment “a True bill” and signed it.<sup>181</sup> The unnamed Negro appeared at the August court, “but for Some Spe-tiall reason” the justices thought that “it was . . . Convenient not to Proceed to Judge-ment” against him until the next court. In this record the clerk refers to the presentment as an indictment, and apparently therefore Haddock had already drawn it up.

After the justices ordered the Negro committed until he could give security to guarantee his appearance in November, Henry Darnall provided that security of an unrecorded amount, and the justices discharged him from custody.<sup>182</sup>

In the bill of indictment Haddock charged that in Mount Calvert Hundred on an unspecified date the Negro, whom he still did not name, “not haveing the ffear of God before his Eyes but as a heathen or Publican did upon y<sup>e</sup> Sabbath day Commonly Called Sunday worke and Labour.” At the November court the slave pleaded guilty to the bill of indictment, which was neither endorsed *billa vera* nor signed by the foreman of the grand jury but rather was signed only “Ja: Haddock Clk Indictm<sup>ts</sup>.” The justices sentenced him to twenty lashes and then ordered him committed to the custody of the sheriff, Josias Willson,<sup>183</sup> until the fine, which the justices previously had not mentioned, “be Assured to be paid” and until the slave could also guarantee the payment of his fees. The amount of the fine is not noted.

In the heading of the case the defendant is identified only as “Diggs Negro,” and in the bill of indictment he is identified as “a negro mann belonging to M<sup>r</sup> Edw<sup>d</sup> diggs otherwise Called a negro belonging to Edw<sup>d</sup> Diggs.”<sup>184</sup>

This is the slovenly judicial environment that Thomas Macnemara encountered when he arrived in Maryland in the spring of 1703. A short search of the records will reveal many such violations of due process.<sup>185</sup> To a serious and competent lawyer the legal conditions in the province must have seemed appalling. Macnemara was not a man to hide either his knowledge or his convictions, and in May of 1718 four of the provincial justices, threatening to resign if Macnemara was allowed to continue to practice before them, protested his “Artfull and Audacious Managem<sup>t</sup> of the Subtile and Tricking Part of the Law.”<sup>186</sup> Macnemara had become the victim of the reality

that the most competent people will always be outsiders.<sup>187</sup>

As his failure in Dominick Kenslagh's action of false imprisonment against James Harris illustrates, Macnemara did not always succeed — in spite of his alleged “Artfull and Audacious Managem<sup>t</sup> of the Subtile and Tricking Part of the Law.” He similarly had no success in William Comber's prosecution for theft in 1705 or in William Foreman's prosecution for hog-theft in that same year.

After the grand jury at the Prince George's County court for March of 1705 presented Comber for stealing several unspecified items from a Mr. Murdock's store, James Haddock drew up a bill of indictment in which he charged that in Patuxent Hundred on 19 March 1704/5 Comber, who was a planter, stole one “Chessheer Chees,” one “Sacking bottom of an English bed and Cords,” and “one Gallon of Syder and Bottles,” altogether worth fifty shillings, from John Murdock. The bill of indictment is not endorsed “a true bill” or *billa vera* or signed by the foreman of the grand jury but is signed only by Haddock as clerk of indictments. The foreman of the grand jury, Hezekiah Bussey, did sign the presentment.

When Comber appeared at that same court and asked for counsel the justices appointed Macnemara as his attorney. Comber pleaded not guilty and put himself upon the country, but the petit jury found him guilty and valued the stolen goods at fifteen shillings. The justices thereupon ordered that Comber pay Murdock £2.5.0 sterling, “it being y<sup>e</sup> 4 fold Stolne [*sic*], one fold being already Received,” and that he stand in the pillory for half an hour and then receive “on his bare back fifteen Lashes well Laid on.”<sup>188</sup> Why Macnemara did not challenge the indictment on the grounds that no grand jury had returned it, as he apparently challenged the bill of indictment or presentment at the Anne Arundel County court just over a year later in

the action against Christopher Vernon, does not appear.<sup>189</sup>

The next month Macnemara also failed to get an acquittal for William Foreman. At the provincial court for April of 1705 William Bladen sent before the grand jury a bill of indictment in which he charged that in Baltimore County on 26 December 1704 Foreman stole, killed, and converted to his own use two barrow hogs worth three pounds sterling and belonging to John Peasley. The grand jury returned the bill a true bill; a petit jury found Foreman guilty; and when the justices asked him what he had to say for himself he asked for an attorney to offer reasons for a stay of judgment.

Either Foreman chose or the justices appointed Macnemara as his counsel, and Macnemara argued that for two reasons the justices should set the verdict aside. First, the indictment was vicious because according to it the offense was against her Majesty's peace and the act of assembly in that case made and provided, while since the crime was a felony the indictment should have stated that it was "against her Majesty's peace crown and dignity and against the form & effect of the said Act of Assembly" in that case made and provided. Second, the indictment stated that the hogs were of the value of three pounds sterling when it should have stated that they were of the *price* of three pounds sterling.<sup>190</sup>

The justices decided that Macnemara's arguments were insufficient to justify a stay of judgment and sentenced Foreman to an hour in the pillory and to eleven stripes at the public whipping post. They also ordered him to pay Peasley sixteen hundred pounds of tobacco fourfold.<sup>191</sup>

Foreman, understandably, was not anxious to experience the whip and the pillory. When later in the session the justices ordered John Gresham, the sheriff of Anne Arundel County, to return his execution of the judgment against Foreman,

Gresham responded that he had not executed the judgment because Foreman had escaped from his custody and had “not been found in his bayliwick till this instant.” The justices ordered Gresham to execute the judgment immediately and fined him four pounds sterling “for his neglect.”<sup>192</sup> When Foreman appeared at the provincial court for September of 1705 under a recognizance for his appearance and his good behavior in the meantime nothing appeared against him, and the justices discharged him with his fees.<sup>193</sup>

More than thirteen years later Macnemara failed to save Thomas Woodfield from some time in the pillory after he was convicted of perjury. At the provincial court for September of 1717 Bladen sent before the grand jury a bill of indictment in which he charged that on 5 April 1716 before Bladen himself as commissary general Woodfield, a planter from St. James’s Parish in Anne Arundel County, swore to the truth of an account of the estate of Richard Got, whose widow and executrix, Elizabeth, Woodfield had married, even though the account was not true and that therefore Woodfield had “falsly maliciously Voluntarily Corruptly & wickedly of his most wicked Inclination” committed “Voluntary & Corrupt perjury.” After the grand jury returned the bill a true bill the justices issued a *capias ad respondendum* for Woodfield’s appearance before the provincial court for April of 1718. At that court Macnemara, appearing for Woodfield, got a continuance until July.

In July Macnemara, whom in May the assembly had disbarred except in cases that he already had underway, provided that he behaved himself properly, and in cases in the chancery court in which he represented the Crown,<sup>194</sup> entered a plea of not guilty for Woodfield and asked for a trial by jury. The petit jury, however, found Woodfield guilty, and the justices returned him to the custody of Benjamin Tasker, the sheriff of Anne Arundel County, until they could decide what to do with him.

Later during that same session they sentenced him to stand one hour in the pillory and required him to give bond of fifty pounds sterling, with two sureties of twenty-five pounds sterling each, to guarantee his appearance at the next court and his good behavior in the meantime. Woodfield did give the security, with Thomas Docwra and Thomas Walker as his sureties, and the justices discharged him with his fees.<sup>195</sup> When he appeared at the provincial court for September of 1718 the justices again discharged him with his fees.<sup>196</sup>

At the provincial court for April of 1705 Macnemara was also unsuccessful in a civil case of slander, but in this case his only recorded argument is that his client was not guilty.

At the provincial court for October of 1704 Anne Richardson, a widow, brought an action of trespass on the case for slander against James Crooke, a merchant from Baltimore County. With William Bladen acting as her attorney, Anne Richardson pointed out in her declaration that she had always been a “good honest faithfull” subject of King William III as well as of Queen Anne and that “from the time of her Nativity” she had always been “free and clear and unsuspected of any Immodesty or incontinency or any other manner of Lewd and loose behaviour.” She had always been “held of good fame reputation State & Estimation” by all sorts of people who knew her. By her good behavior she had “acquired the Friendship and good will of many worthy honest persons” who were her neighbors and acquaintances, and her good reputation and that friendship and good will had given her great comfort and satisfaction.

By her good behavior, Anne Richardson continued, and for “the bettering [of] her fortune” she “had acquired the liking and good will of the Worshipfull James Maxwell,” a gentleman from Baltimore County, who had sought her in marriage.



She had accepted him, and the marriage was “designed to be solemnized.”<sup>197</sup>

James Crooke, however, “not being Ignorant” of the prospective marriage “but of his most Wicked Mallice premeditated,” envying Anne Richardson’s “Prosperous and flourishing state . . . and Contriving” not only to destroy her “good name fame and reputation . . . but also to prevent and break off the Marriage” as well as to bring Anne Richardson into contempt, disgrace, and ruin, in Baltimore County on 30 June 1704 in the presence of several people “did speak and publish” the “false forged scandalous wicked and opprobrious words” that he had lain with Anne Richardson “twice as a man should lye with his wife.” Once when Joseph Ellidge was threshing oats, Crooke said that

his hand . . . was lying upon . . . [Anne Richardson’s] stamock  
. . . and she . . . tooke his hand of[f] her stamock and put it  
upon her Cunt . . . And for ought he . . . knew he . . . had  
Fingerfuck’d her . . . as often as he had fingers and toes.<sup>198</sup>

As a result of Crooke’s words, Anne Richardson continued, she was “much damnyed in her fame Creditt and good repute,” and on 30 August 1704 James Maxwell refused to marry her. She was suing Crooke for five hundred pounds sterling.

Through Macnemara Crooke imparled until the next court. At the provincial court for April of 1705 he did not deny that Crooke had said what Anne Richardson accused him of saying but rather insisted that he had the right to say those things because they were true. Therefore it “was lawfull for him to speak utter and publish the words” that he had spoken. Since Crooke could verify the truth of what he had said, Macnemara asked for judgment in his favor.

Bladen in his replication argued that nothing that Macnemara had said should debar Anne Richardson from maintaining her action because everything he said was false. He asked for a trial by jury, and when Crooke agreed to the trial the justices

ordered the sheriff of Anne Arundel County, John Gresham Jr.,<sup>199</sup> to summon twelve men to serve as a petit jury to hear the case. The jurors believed Anne Richardson and set her damages at fifty pounds sterling in addition to the costs of her suit. The justices therefore ruled that she should recover from James Crooke the fifty pounds sterling as well as 3759 pounds of tobacco for her costs and held James Crooke in mercy.<sup>200</sup>

Anne Richardson ended up with the fifty pounds damages and a prestigious marriage as well. With her virtue restored she was once again a suitable wife for the respectable Maxwell, a long-time justice of Baltimore County,<sup>201</sup> and by May of 1706 the two were married.<sup>202</sup>

In spite of his lack of success in these cases, Thomas Macnemara appears to have succeeded far more often than he failed. While Daniel Dulany appears not to have held Macnemara's successful defense of John Blee against him and might even have become a sort of protégé of Macnemara,<sup>203</sup> other lawyers might not have been so forbearing. Macnemara was a threat not only to the income of clerks of indictments and clerks of the county courts but also to the complacent confidence of lawyers less able than himself. Worst of all, he was a threat to the entire economic, social, and political system of the repressive provincial society not only because of his alleged sympathy for Catholics but also because his challenges to the chaotic legal structure made it more difficult for authority to dispose of suspicious characters and might even cause the population to question its validity. Already by March of 1705, when he saved James Key from punishment at the Prince George's County court, Thomas Macnemara was setting the stage for his own future problems.

## *Chapter 2*

### *Competence*

<sup>1</sup> Charles Calvert, fifth Baron Baltimore, and his guardian, Francis North, second Baron Guilford, to Thomas Macnemara, 4 February 1717/18, *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXXIII, 170-171. For Guilford as Baltimore's guardian, see Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 114.

I have not done any quantifying on this question, but Macnemara appears to have been assigned counsel for defendants in criminal cases especially often. At the Baltimore County court for March of 1712/13, for example, he was assigned counsel for five defendants (Baltimore County Court Proceedings, Liber I. S., No. A, pp. 334, 349, 350, 375, 378, 397, 398, 404-405, 439, and Text below at Notes 94-102), and at the Baltimore County court for June of 1714 for five more. Baltimore County Court Proceedings, Liber I. S., No. A, pp. 334, 400, 443, 468, 510, 531, 532, 573, and Note 102 below. Macnemara was successful in all of these cases.

<sup>2</sup> In 1716 the delegates did not have much confidence in the competence of the attorneys practicing in the county courts. In a message to the upper house on 26 July 1716 they refer to the "General Unskilfullness" of those attorneys. As a result of that lack of skill, the demurrers that they drew up were "for the most part faulty." *Md.*

*Arch.*, XXX, 410, 514.

With a demurrer the defendant admitted the facts that the plaintiff alleged but claimed that those facts were insufficient to require him to answer. Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 432; C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), pp. 230-235.

<sup>3</sup> Four of the seven provincial justices to Governor John Hart and the two houses of the assembly, 5 May 1718, *Md. Arch.*, XXXIII, 171-172. See also Chapter 11, "Disbarred Again, 1718," at Notes 64-74.

<sup>4</sup> Council of Maryland to the Board of Trade, 18 July 1712, The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127 (photocopy in Library of Congress).

<sup>5</sup> *Ibid.*; Ronald Hoffman, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500-1782* (Chapel Hill: The University of North Carolina Press, 2000), pp. 53, 92, and Hoffman's Appendix 6, Chart B.

<sup>6</sup> Anne Arundel County Court Judgment Record, Liber G, p. 320.

<sup>7</sup> Council of Maryland to the Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127. See also Chapter 6, "Dishonest Enemies, 1712," after Note 11.

<sup>8</sup> Prince George's County Court Record, Liber B, p. 289.

<sup>9</sup> In a petition to the council on 30 September 1707 Macnemara pointed out that it had been "above three years" since he was admitted as an attorney in the provincial court and in the Anne Arundel, Calvert, and Prince George's County

courts. *Md. Arch.*, XXV, 226-227. Probably he was admitted to all of these county courts during the same period — in March of 1703/4. For Macnemara's petition, see Chapter 3, "Early Troubles, 1703-1710," at Note 50.

<sup>10</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 261, 266.

<sup>11</sup> Carroll T. Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729* (Washington: The American Historical Association, 1933), p. 108.

<sup>12</sup> Baltimore County Court Proceedings, Liber I. S., No. A, p. 93. Since the meeting of the Baltimore County court did not conflict with the meetings of the Anne Arundel, Calvert, and Prince George's County courts (1704, c. 63, *Md. Arch.*, XXVI, 346; 1708, c. 12, *Md. Arch.*, XXVII, 367-368), Macnemara could have practiced there during his earlier years in the province also, but he did not mention that county in his petition mentioned in Note 9 above. The records of the Baltimore County court are missing after 1696 (Liber G, No. 1), long before Macnemara arrived in Maryland, until November of 1708 (Liber I. S. B., No. B), after Governor John Seymour had disbarred him for the first time. See Chapter 3, "Early Troubles, 1703-1710," after Note 26.

<sup>13</sup> Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), p. 514. On 15 March 1709/10 the chancery court "Ordered that M<sup>r</sup> Thomas Macnemara be assigned Councill for James Crook against James Maxwell." Chancery Records 2, p. 677. After being continued twice, Crooke's action against Maxwell was dismissed on 7 March 1710/11. *Ibid.*, pp. 681, 688, 720.

<sup>14</sup> Prince George's County Court Record, Liber B, p. 338a. One presentment included all three defendants.

<sup>15</sup> *A venire facias ad respondendum* is

A writ to summon a person, against whom an indictment for a misdemeanor has been found, to appear and be arraigned for the offense. A warrant is now more commonly used.

*Black's Law Dictionary* (6th edition), p. 1556.

<sup>16</sup> The appointment of Joshua Cecil as attorney for James Key and Thomas Keysey was a "Speatiall Favour" because defendants in criminal cases usually did not have attorneys. Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4 vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), IV, 355-356; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 158.

<sup>17</sup> An imparlance is simply a continuation.

In early practice, imparlance meant time given to either of the parties to an action to answer the pleading of the other. It thus amounted to a continuance of the action to a further day. Literally the term signified leave given to the parties to *talk together; I. e.*, with a view to settling their differences amicably. But in modern practice it denotes a time given to the defendant to plead.

*Black's Law Dictionary* (6th edition), p. 752. Emphasis in Black.

<sup>18</sup> Prince George's County Court Record, Liber B, pp. 343-344, 344.

<sup>19</sup> 1704, c. 55, *Md. Arch.*, XXVI, 334-336.

<sup>20</sup> Neither bill is endorsed *billa vera* or "a true bill" or signed by the foreman of any grand jury, though William Young, the foreman of the grand jury in November of 1704, had signed the presentment. Prince George's County Court Record, Liber B, p. 338a. Thus James Haddock must not have sent the bills of indictment against Key and Keysey before any grand jury.

The endorsement *billa vera* or "a true bill" means that the grand jurors believed that there was sufficient evidence against the suspect to justify holding him for

trial. Blackstone, *Commentaries*, IV, 305-306; *Black's Law Dictionary* (6th edition), p. 167.

For prosecution on bills of indictment that the clerks of indictments drew up on the basis of presentments but did not send before any grand jury see later in this chapter, at Notes 20, 26, 49-51, 66ff., 104-114, 128-130,

<sup>21</sup> Prince George's County Court Record, Liber B, pp. 354a-355. The page numbering of the record of the Prince George's County court for March of 1705 is badly messed up.

<sup>22</sup> *Ibid.*, pp. 359-359a.

<sup>23</sup> James Key's case appears before Thomas Keysey's in the record, but whether that means anything we cannot be sure. We do not know whether the clerks entered cases in the order in which they were tried.

<sup>24</sup> Prince George's County Court Record, Liber B, pp. 384-384a.

<sup>25</sup> *Ibid.*, p. 360a.

<sup>26</sup> *Ibid.*, pp. 402a-403 (Cecil), 403-403a (Jones).

<sup>27</sup> See Chapter 9, "Harassment by Indictment, 1712-1719." For William Bladen, see C. Ashley Ellefson, *William Bladen of Annapolis, 1673?-1718: "the most capable in all Respects" or "Blockhead Booby"?* (2007), Volume 747 of Archives of Maryland Online, at <http://aomol.net/000001/000747/html/index.html>.

<sup>28</sup> Day, *A Social Study of Lawyers in Maryland, 1660-1775*, p. 695.

<sup>29</sup> By an act of 1699 the assembly provided that a plaintiff could swear to an account before one provincial justice or "any two Justices of the County Courts." 1699, c. 39, *Md. Arch.*, XXII, 528-530. In October of 1704 the assembly passed a new act (1704, c. 37, *Md. Arch.*, XXVI, 298-301), but since Whichaley was alleged to have sworn falsely on 11 August 1703 and 16 May 1704 the act of 1699 would be

the relevant one.

<sup>30</sup> The record of the session of the provincial court that met on 25 September 1705 does not note who was serving as sheriff at that session. Provincial Court Judgment Record, Liber T. B., No. 2, p. 65. Probably, however, Josiah Wilson had not yet replaced John Gresham Jr. as sheriff of Anne Arundel County.

Sheriffs of Anne Arundel County, from Anne Arundel County Court Judgment Record, Liber T. B., No. 1:

11 September	1705	John Gresham Jr.	97;
13 November	1705	Not stated	109;
8 January	1705/6	Not stated	148;
12 March	1705/6	Josiah Wilson	167.

The sheriff of Anne Arundel County served as the sheriff of the provincial court, though all sheriffs had to attend that court. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 141-142.

<sup>31</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 167; Provincial Court Judgment Record, Liber T. B., No. 2, p. 191.

<sup>32</sup> “. . . at his prayer M<sup>r</sup> Thomas Macnemara is assigned him for Councill . . . .” Provincial Court Judgment Record, Liber T. B., No. 2, p. 214.

That Whichaley, himself an attorney, could plead that he was “Illiterate and altogether Ignorant of the Law” might say something about the quality of lawyers in Maryland at the beginning of the eighteenth century. Possibly he was actually that ignorant of the law; possibly he was afraid that the justices would not grant him an attorney unless he did use such language; or possibly that language was conventional for a defendant who asked for representation.

<sup>33</sup> In the 1690s the county court commission sometimes was referred to as a commission of the peace and for the trial of causes (*Md. Arch.*, XX, 65, 131, 190,



379, 380, 386; XXIII, 401), and in 1705 Governor John Seymour began issuing two commissions, one called a commission of the peace and the other a commission of oyer and terminer. The commission of the peace provided for the criminal jurisdiction of the county justices, while the commission of oyer and terminer provided for both criminal and civil jurisdiction. The commissions of the peace always included the justices named in the commissions of oyer and terminer and several more. Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 109-111, 111-113; Liber T. B., No. 2, pp. 33-36, 37-39; Charles County Court Record, Liber B, No. 2, pp. 167-169, 170-171, 561-563, 563-564; Kent County Court Proceedings, 1707-1709, pp. 114-115, 115a-116a, 176-177, 177a-178a; Prince George's County Court Record, Liber B, pp. 379a-380, 380a-381, 409a-410a, 410a-411a; Talbot County Deeds, Liber R. F., No. 10, pp. 73-75, 76-78; Talbot County Court Judgment Record, Liber R. F., No. 11, pp. 192-193, 193-194; *Md. Arch.*, XXVI, 533-534.

Following protests of the lower house at the expense of having two commissions (*Md. Arch.*, XXVII, 388, 425), starting in 1709 only one commission, called a commission of the peace and of oyer and terminer, was issued. Charles County Court Record, Liber B, No. 2, pp. 705-706; Liber D, No. 2, pp. 1-3, 204-206; Liber E, No. 2, pp. 466-467; Queen Anne's County Court Judgment Record, Liber E. T., No. B, pp. 1-2.

For the two commissions, see Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 46-50.

<sup>34</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 258, 261, 262.

<sup>35</sup> The sheriff of Charles County in May of 1706 was Walter Story. Charles County Court Record, Liber B, No. 2, p. 172; Committee of Accounts, 8 December 1708, in "Unpublished Provincial Records," *Maryland Historical Magazine*, XVII,

No. 1 (March 1922), p. 53.

<sup>36</sup> Provincial Court Judgment Record, Liber T. B., No. 2, pp. 72, 77, 211-215. I have not found any further proceedings against Whichaley. Some of the records of the provincial court for September of 1706, however, are missing. Provincial Court Judgment Record, Liber T. B., No. 2, ends with the court for April of 1706, and Liber P. L., No. 1, begins with the records of the civil cases of the session for September of 1706.

The case in which Whichaley was supposed to have sworn falsely — Thomas Whichaley v. Walter Bean, Administrator of John Beane — was tried at the provincial court for May of 1704 and ended in a non-suit because when the petit jury was ready to give its verdict Whichaley did not appear either in person or through his attorney, Cornelius White. Provincial Court Judgment Record, Liber T. L., No. 3, pp. 357-361.

Before he became attorney general William Bladen showed more concern about the proper form of indictments and as counsel for defendants could become very technical himself. *Ibid.*, Liber W. T., No. 3, pp. 232-238 (Cornelius Ward Jr., Stephen Ward, Jonathan Ward, and John Taylor), 780-783 (Thomas alias Dick Thomas Hedgcock); Liber T. L., No. 3, pp. 105-108 (Anthony Millburne), 433-434 (John and Elizabeth Ricketts), 435-437 (John Davison), 437-439 (John Davison).

For these cases, see Ellefson, *William Bladen of Annapolis, 1673?-1718*, Appendix to Chapter 6, "William Bladen as Defense Attorney."

<sup>37</sup> The attorney general served as clerk of indictments in those county courts in which he had a practice. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 147-148.

<sup>38</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 170.

The presentments were endorsed “Billa Vera James Lewis foreman.” *Ibid.*

During these early years presentments might or might not be endorsed *billa vera*. For examples of presentments endorsed *billa vera* or “True Bill” and signed by the foremen of the grand juries, see Prince George’s County Court Record, Liber D, pp. 68-69, 88-89, 172-173, 249, 315; Liber G, p. 43a. For presentments not endorsed *billa vera* or “True Bill” and not signed by the foreman of the grand jury, see *ibid.*, Liber G, p. 78. The record refers to these presentments as bills, but the prosecution of some of them makes it clear that they were presentments rather than indictments. *Ibid.*, pp. 81, 130.

<sup>39</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 170.

<sup>40</sup> Owings, *His Lordship’s Patronage*, p. 148; *Md. Arch.*, XX, 321, 541; XXIII, 479.

<sup>41</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 105, 106, makes Christopher Vernon the clerk of indictments of Anne Arundel County on 11 November 1701, but Alan Day does not include him in the list of attorneys of the province (Day, *A Social Study of Lawyers in Maryland, 1660-1775*), possibly because the records of the Anne Arundel County court for this period are gone forever. Because fire destroyed the state-house in Annapolis on the night of 17-18 October 1704 (*Md. Arch.*, XXV, 179-180), the earliest records of the Anne Arundel County court that have survived are for the session of January 1702/3. Anne Arundel County Court Judgment Record, Liber G.

Owings, in *His Lordship’s Patronage*, p. 148, says that Christopher Vernon returned to England after he resigned as clerk of Anne Arundel County in September of 1698, but he must have returned to Maryland. At the provincial court for April of 1705 he was foreman of the grand jury. Provincial Court Judgment Record, Liber

T. L., No. 3, p. 555.

Actually Vernon resigned as clerk of Anne Arundel County in August of 1698, but Governor Francis Nicholson and his council ordered that he remain clerk until the November court, when “his Year . . . [would] be up,” and gave him permission to officiate in the meantime through a deputy of whom the justices of the county would approve. *Md. Arch.*, XXIII, 479.

<sup>42</sup> As the record of the case against Thomas Whichaley illustrates, an indictment might be referred to both as a presentment and an indictment. Provincial Court Judgment Record, Liber T. B., No. 2, pp. 211-215.

An indictment was a presentment, but a presentment was not an indictment. Blackstone, *Commentaries*, IV, 301. J. H. Baker: “All indictments were presentments, but usage reserved the latter term for those made from the jurors’ own knowledge (I. e. without bills) . . .” J. H. Baker, “Criminal Courts and Procedure at Common Law, 1550-1800,” in J. S. Cockburn, ed., *Crime in England, 1550-1800* (Princeton: Princeton University Press, 1977), p. 300, Note 19.

Later in eighteenth-century Maryland grand juries did distinguish between the presentment and the indictment. Anne Arundel County Court Judgment Record, 1740-1742, pp. 94, 143-144, 311, 414; Charles County Court Record, 1748-1750, pp. 509, 609-610; Provincial Court Judgment Record, Liber E. I., No. 10, pp. 41, 65-66; Liber E. I., No. 13, p. 1; Liber D. D., No. 1, pp. 183-184, 195-197, 487, 505; Liber D. D., No. 2, pp. 86, 97-98, 99-100, 100-101; Liber B. T., No. 3, pp. 1, 14-15.

<sup>43</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 304.

<sup>44</sup> 1698, c. 7, *Md. Arch.*, XXXVIII, 113-116, together with 1681, c. 3, *Md. Arch.*, VII, 201-203, and 1692, c. 34, *Md. Arch.*, XIII, 479-481; 1699, c. 25, *Md. Arch.*, XXII, 502-504, together with 1699, c. 44, *Md. Arch.*, XXII, 553-555; 1704,

c. 55, *Md. Arch.*, XXVI, 335-336, together with 1700, c. 2, *Md. Arch.*, XXIV, 98-101, and 1704, c. 25, *Md. Arch.*, XXVI, 266-269; 1715, c. 48, *Md. Arch.*, XXX, 248-252, together with 1715, c. 26, *Md. Arch.*, XXX, 304-308.

Later in this chapter, at Notes 103ff., I say more about prosecuting thefts only on indictments that grand juries returned.

<sup>45</sup> A presentment, specifying only the suspect or suspects and the alleged crime, might read:

We the Grand Jury men of this County doe present Susanna Swanson and Mary Evans upon Suspision of Killing a Beef of Archabald Edmunsons.

Billa Vera John Chittam Foreman

Joseph H. Smith and Philip A. Crowl, eds., *Court Records of Prince Georges County, Maryland, 1696-1699* (Liber A), (Washington: The American Historical Association, 1964), p. 394.

An indictment, on the other hand, was supposed to specify not only the name, position, and residence of the suspect and his alleged crime but also the date, place, and victim of the alleged crime as well as the value of any goods allegedly stolen or the description and value of any instrument that had allegedly caused a person's death and a description of the wound it caused. The time and place did not have to be exact "provided [that] the *time* be laid previous to the finding of the indictment, and the *place* within the jurisdiction of the court . . . ." Blackstone, *Commentaries*, IV, 306. Emphasis in Blackstone.

<sup>46</sup> For bastardy a person could be either presented or indicted. For presentments for bastardy, see Anne Arundel County Court Judgment Record, Liber I. B., No. 1, p. 5; Baltimore County Court Proceedings, Liber T. B. & T. R., No. 1, pp. 2, 116, 220, 393-394, 394, 394-395, 395-396, 397, 398. Italics indicate pages on which presentments are noted.

<sup>47</sup> As in the case of bastardy, for assault a person might be either presented or indicted. For presentments, see Anne Arundel County Court Judgment Record, 1740-1742, pp. 398, 482-483; Frederick County Court Judgment Record, 1761-1762, pp. 446, 452, 453; Prince George's County Court Record, Liber S. S., pp. 182, 491-492; Provincial Court Judgment Record, Liber E. I., No. 15, p. 336.

For indictments for assault, see Anne Arundel County Court Judgment Record, Liber I. B., No. 1, pp. 283, 288; *ibid.*, 1740-1742, pp. 469, 483-484; Kent County Criminal Book, Liber J. S., No. 23, pp. 33-35; Somerset County Court Judicial Record, 1754-1757, p. 236a, together with Somerset County Court Papers, November Court 1756; Provincial Court Judgment Record, Liber E. I., No. 7, pp. 466, 481-482, 482. Italics indicate pages on which the presentments or indictments are noted.

<sup>48</sup> For indictments based on presentments, see Anne Arundel County Court Judgment Record, 1740-1742, pp. 94, 143-144, 311, 414; Charles County Court Record, 1748-1750, pp. 509, 609-610; Provincial Court Judgment Record, E. I., No. 10, pp. 41, 65-66; Liber D. D., No. 1, pp. 183-184, 195-197, 487, 505; Liber D. D., No. 2, pp. 86, 97-98, 100-101; Liber B. T., No. 3, pp. 1, 14-15. Italics indicate pages on which the returns are noted.

<sup>49</sup> There is no record of the return of the indictment against Christopher Vernon at the June court, and the bill of indictment is neither endorsed *billa vera* or "a true bill" nor signed by John Edwards, the foreman of the grand jury at that court. Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 302-303.

<sup>50</sup> *Nul tiel record*: "No such record. A plea denying the existence of any such record as that alleged by the plaintiff." *Black's Law Dictionary*, p. 1069.

<sup>51</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 304-305. Later Macnemara sued Christopher Vernon for his fees. At the Anne Arundel

County court for August of 1709 he recovered 573 pounds of tobacco plus 512 pounds of tobacco costs for appearing for and defending George Barney at the suit of Henry Roberts at the Anne Arundel County Court for January of 1705/6 at Vernon's request and for defending Vernon in the two cases at the Anne Arundel County court for June of 1706. Anne Arundel County Court Judgment Record, Liber T. B., No. 2, pp. 83-84.

Macnemara's suing of Vernon might not, however, have been a litigious action. It might rather have been a device for getting the payment of the debt recorded in the public records. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 336-337, 397-400, 412-418, 423-424.

<sup>52</sup> Sir William Blackstone's explanation of the plea *nul tiel record* makes it appear that Macnemara could have been using the plea in this way (Blackstone, *Commentaries*, III, 330-331), though *Black's Law Dictionary* makes it appear that *nul tiel record* was not the appropriate plea for Macnemara to use in a case such as this. *Black's Law Dictionary* (6th edition), p. 1069.

<sup>53</sup> Blackstone, *Commentaries*, III, 123-125. For words "spoken in derogation of a peer, a judge, or other great officer of the realm" not only could the culprit be prosecuted but the offended party could also bring his civil suit for slander. *Ibid.*, pp. 123-124.

For criminal cases of slandering officials, see *Proprietor v. Thomas Macnemara*, in Provincial Court Judgment Record, Liber V. D., No. 3, pp. 234, 262; Liber P. L., No. 4, pp. 83-84; *Proprietor v. Joseph Browne*, in *ibid.*, Liber P. L., No. 7, pp. 314-316; *Proprietor v. Edward Wright*, in *ibid.*, pp. 319-321; *Proprietor v. John Oldham*, in Talbot County Court Judgment Record, Liber P. F, No. 6, pp. 331-335.

For the case against Thomas Macnemara for seditious speech against Governor

John Hart, see Chapter 9, “Harassment by Indictment, 1712-1719,” after Note 94. For an illustration of an official’s recovering damages from a layman for slander in Maryland in 1727, see *John Hall v. James Presbury*, Provincial Court Judgment Record, Liber R. B., No. 1, pp. 142-146. As the record of the case indicates, John Hall was a member of the council.

At the provincial court for September of 1716, the justices fined Kenelm Cheseldyne five hundred pounds of tobacco on an information after he admitted that he had called the proprietor a son-of-a-bitch on 17 July 1716. Provincial Court Judgment Record, Liber V. D., No. 2, p. 367. This crime, however, would be considered seditious speech rather than slander. It is not named either in the record or in the index to the Provincial Court Judgment Record in the volume or in the cumulative index at the State Archives in Annapolis.

In the information, which served in the place of an presentment or an indictment, the attorney general or the clerk of indictments in a formal way informed the court that the defendant had committed a specific crime. The court could try the suspect immediately; the defendant admitted or denied the charge; and if necessary the court summoned a jury and heard witnesses against him. For the information, see Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 189-195.

<sup>54</sup> Blackstone, *Commentaries*, III, 123-125; Theodore F. T. Plucknett, *A Concise History of the Common Law* (5th edition; London: Butterworth & Co. (Publishers), Ltd., 1956), pp. 483-502; S. F. C. Milsom, *Historical Foundations of the Common Law* (London: Butterworths, 1969), pp. 332-344; John Wilder May, *The Law of Crimes* (Boston: Little, Brown, and Company, 1881), p. 187.

A good treatment of defamation is Van Vechten Veeder, “The History of the



Law of Defamation,” in Association of American Law Schools, *Select Essays in Anglo-American Legal History* (3 vols.; Little, Brown, and Company, 1907-1909), III, 446-473. On slander and libel, see also Joseph R. Fisher, “A Chapter in the History of the Law of Libel,” *The Law Quarterly Review*, X (No. XXXVIII, April 1894), pp. 158-163; Frank Carr, “The English Law of Defamation: With Especial Reference to the Distinction Between Libel and Slander,” *ibid.*, XVIII (Nos. LXXI and LXXII, July and October 1902), pp. 255-273, 388-399; J. H. Baker, “Introduction” to *The Reports of Sir John Spelman* (London: Selden Society, 1978), II, 236-248; Sir William Holdsworth, *A History of English Law* (17 vols.; London: Methuen & Co., 1903-1972), VIII, 333-378.

Examples of civil suits for slander are Anne Arundel County Court Judgment Record, 1740-1742, pp. 96-97; Provincial Court Judgment Record, Liber R. B., No. 2, pp. 455-457; Liber E. I., No. 7, pp. 185-188.

<sup>55</sup> Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (3 vols.; London: Macmillan and Co., 1883; reprinted New York: Burt Franklin, n. d.), II, 430.

<sup>56</sup> For Joseph Hill, see Chapter 3, “Early Troubles, 1703-1710,” at Notes 53-92, and for Richard Clarke, see indexes to *Md. Arch.*, XXV, XXVI, and XXVII; John Seymour to Council of Trade and Plantations, 23 June 1708, The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXIII, No. 1570; TNA (PRO), Colonial Office 5, Vol. 727, p. 89; John Seymour to Principal Secretary of State, 23 June 1708, in “Unpublished Provincial Records,” *Maryland Historical Magazine*, XVI, No. 4 (December 1921), pp. 357-358; Provincial Court Judgment Record, Liber T. L., No. 1, pp. 576-577; Liber T. L., No. 3, pp. 266, 268, 274-275, 429; Anne Arundel County Court Judgment Record,

Liber G, pp. 252, 284-285; 1705, c. 5, *Md. Arch.*, XXVI, 513-514; 1707, c. 1, *Md. Arch.*, XXVII, 139-140.

<sup>57</sup> A swallow fork is “an earmark on an animal made by a triangular cut removing the tip of the ear.” It is called a swallow fork because of “its resemblance to the fork of a swallow’s tail.” *Webster’s Third New International Dictionary of the English Language Unabridged* (1981).

<sup>58</sup> The bill of indictment was not endorsed “a true bill” or *billa vera* and was not signed by the foreman of any grand jury.

<sup>59</sup> With the *certiorari*, either the plaintiff or the defendant removed a case to a higher court. Blackstone, *Commentaries*, IV, 262, 265, 272, 320-321; *Black’s Law Dictionary* (6th edition), p. 228, 1609; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 204-205, 206, 235-236, 365-366, 390-392, 475, 582; C. Ashley Ellefson, “A Book of Writs and Precepts,” Typescript on file at the Maryland State Archives, Annapolis, alphabetized.

<sup>60</sup> John Mortemore, John Tanneyhill, and William Coster gave bond of five pounds sterling each to guarantee their appearance at the provincial court in April of 1707 to testify against Harrison. The record does not specify that Macnemara got the *certiorari* for Harrison.

<sup>61</sup> On a *certiorari* the attorney general took over from the clerk of indictments as the prosecutor in the provincial court. This case illustrates that, but see also Provincial Court Judgment Record, Liber P. L., No. 2, pp. 684-687; Liber I. O., No. 1, pp. 107-118; Liber V. D., No. 2, pp. 362-364; Liber V. D., No. 3, pp. 78-81.

<sup>62</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 157-159.

<sup>63</sup> Worthington’s first name is not included in the record of this case either in the Somerset County Deeds or in the Provincial Court Judgment Record (Somerset

County Deeds, Liber A. B., pp. 70-77; Provincial Court Judgment Record, Liber P. L., No. 1, pp. 198-206), but it appears that Samuel Worthington was the only Worthington who practiced law in Maryland during the colonial period. Day, *A Social Study of Lawyers in Maryland, 1660-1775*, pp. 712-713. On 21 February 1697/8 he is identified as the clerk of indictments of Somerset County. *Md. Arch.*, XXIII, 385-386.

<sup>64</sup> Before John Franklyn, one of the justices of Somerset County, Griffen on 27 February 1705/6 gave bond of fifty pounds sterling, with no surety, to guarantee his appearance at the next county court at Dividing Creek to “Confirm what he . . . [had] already Declared or . . . [could] further Declare.” Provincial Court Judgment Record, Liber P. L., No. 1, p. 200.

On 9 March 1705/6 John West, another of the justices of Somerset County, issued a warrant directing Lawrence Ryley, the constable of Bogettenorten Hundred, to have Edward Hammond before the Somerset County court on the following Tuesday to answer “Divers Complaints” against him for

his Desolute [*sic*] way of Living his Immorality and pro-  
phainness [*sic*] his Audacity and presumption his Contempt  
of the Good Laws both of God and man and his puting [*sic*]  
her Maj<sup>ties</sup> good subjects of . . . [the] County in Great Dread  
and fear.

*Ibid.*, p. 196.

<sup>65</sup> The law on fornication and adultery was 1704, c. 60, *Md. Arch.*, XXVI, 341-343. When Hammond appeared at the Somerset County court for March of 1705/6 the justices required him to give security of fifty pounds sterling, with one surety in the same amount, to abide by the judgment of the court. William Bowen became his surety. Provincial Court Judgment Record, Liber P. L., No. 1, p. 199.

<sup>66</sup> Besides Enoch Griffen, people who gave depositions in Hammond’s case

were Robert Ford, Ford's wife Joan Ford, Walter Evans, Evans' wife Mary Evans, John Grevar, Robert Keith, Robert Hodges, and Deborah Davis. Somerset County Deeds, Liber A. B., pp. 70-77; Provincial Court Judgment Record, Liber P. L., No. 1, pp. 198-206.

<sup>67</sup> "fflouting."

<sup>68</sup> A rundlet is "a small barrel or cask of varying capacity." *Webster's New World Dictionary of the American Language* (College Edition, 1959).

<sup>69</sup> It appears likely that Hammond was referring here to some sort of primitive, wooden hay-fork. Or, possibly, a manure-fork, though by 1720 "few planters had even a single dung fork." Gloria L. Main, *Tobacco Colony: Life in Early Maryland, 1650-1720* (Princeton: Princeton University Press, 1982), p. 109n.

It is possible that Hammond was referring to a table-fork, although table-forks "did not come into general use until the second half of the eighteenth century." *Ibid.*, p. 171n. At the same time, "around 1700 or so," the use of table-forks did become more wide-spread, though "their impact remained greatly limited before 1720 or later." *Ibid.*, p. 248. See also *ibid.*, pp. 190, 190n., 234, 235, 237.

Lois Green Carr and Lorena S. Walsh give the same information from their own research. Lois Green Carr and Lorena S. Walsh, "Changing Lifestyles and Consumer Behavior in the Colonial Chesapeake," in Cary Carson, Ronald Hoffman, and Peter J. Albert, eds., *Of Consuming Interests: The Style of Life in the Eighteenth Century* (Charlottesville: The University Press of Virginia, 1994, pp. 65, 81.

<sup>70</sup> The horns to which Hammond referred here are the horns that a cuckold, a man whose wife is unfaithful to him, is imagined to be wearing on his forehead.

<sup>71</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 201-205.

<sup>72</sup> The record does not make clear whether Hammond's security of one hundred

pounds sterling was in addition to or instead of his security of twenty pounds sterling. If the security of twenty pounds sterling was for his good behavior, it is logical to believe that the security of one hundred pounds sterling replaced it.

<sup>73</sup> For the writ of error, see Blackstone, *Commentaries*, III, 407, xxi; IV, 391-392; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 244-245, 248-249; Ellefson, *A Book of Writs and Precepts*, alphabetized.

<sup>74</sup> Indictments ordinarily included the name of the defendant twice, with two separate identifications. Thus:

[October 1702:] Dennis Mackerte late of Ann Arund County Labourer otherwise called Dan<sup>ll</sup> Mackert Serv<sup>t</sup> to Rob<sup>t</sup> Ungle of Talbott county . . . .

Provincial Court Judgment Record, Liber W. T., No. 4, pp. 194-196.

[October 1712:] Thomas Macnemara of the City of Annapolis in S<sup>t</sup> Anns Parish in Ann Arundel County Esq<sup>r</sup> otherwise Called Thomas Macnemara of the port of Annapolis in Anne Arundell County Gent . . . .

*Ibid.*, Liber T. P., No. 2, p. 584.

<sup>75</sup> According to Blackstone it was “not customary” to try misdemeanors at the same court at which the defendant pleaded not guilty. Blackstone, *Commentaries*, IV, 351.

<sup>76</sup> The definition of *capiatur pro fine*:

(Let him be taken for the fine.) In English practice, a clause inserted at the end of old judgment records in actions of debt, where the defendant denied his deed, and it was found against him upon his false plea, and the jury were troubled with the trial of it.

*Black's Law Dictionary* (6th edition), p. 208.

An alternative wording for the text is that the justices had not issued a writ for the collection of the fine that they had imposed on Hammond.

Blackstone considers the *capiatur* with civil cases, and 5-6 William and Mary, c. 12 (1694), made it unnecessary in those cases. Blackstone, *Commentaries*, III, 398, xii; 5-6 William and Mary, c. 12, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), IX, 279.

<sup>77</sup> For adultery and fornication, see *Black's Law Dictionary* (6th edition), pp. 51, 653.

<sup>78</sup> The fine for adultery was three pounds sterling or twelve hundred pounds of tobacco, while for fornication the fine was thirty shillings or six hundred pounds of tobacco. 1704, c. 60, *Md. Arch.*, XXVI, 341-343.

<sup>79</sup> The alleging of additional unspecified errors was conventional in the proceedings on the writ of error. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 248-249; Provincial Court Judgment Record, Liber W. T., No. 3, pp. 238-247 (Phillip Clarke), pp. 780-783 (William Bladen); Liber T. L., No. 3, pp. 105-108 (William Bladen), 108-110 (Jacob Regnier), 242-243 (Jacob Regnier); Liber P. L., No. 1, pp. 198-206 (Thomas Macnemara); Liber P. L., No. 2, pp. 224-225 (Wornell Hunt); Liber I. O., No. 1, pp. 524-530 (Thomas Macnemara); Liber V. D., No. 3, pp. 172-175 (Thomas Bordley); Liber P. L., No. 7, pp. 28-30 (Thomas Bordley); Liber W. G., No. 2, pp. 463-465 (Thomas Bordley); Liber E. I., No. 2, pp. 423-427 (Thomas Clark); Liber E. I., No. 6, pp. 414-416 (William Cumming); Liber E. I., No. 9, pp. 95-98 (Charles Goldesborough); Liber G. S., No. 1, pp. 640-644 (Daniel Dulany).

<sup>80</sup> *Ore tenus* means "By word of mouth; orally. Pleading was anciently carried on *ore tenus*, at the bar of the court." *Black's Law Dictionary* (6th edition), p. 1099.

Sir William Blackstone:

Pleadings are the mutual altercations between the plain-

tiff and defendant; which at present are set down and delivered into the proper office in writing, though formerly they were usually put in by their counsel *ore tenus*, or *viva voce*, in court, and then minuted down by the chief clerks, or prothonotaries . . . .

Blackstone, *Commentaries*, III, 293.

<sup>81</sup> On writs of error as on writs of *certiorari* in criminal cases, in the provincial court the attorney general took over from the clerk of indictments. Provincial Court Judgment Record, Liber W. T., No. 3, pp. 232-238, 238-247, 780, 780-783; Liber T. L., No. 3, pp. 105-108, 108-110, 242-243; Liber P. L., No. 1, pp. 198-206; Liber P. L., No. 2, pp. 224-225; Liber I. O., No. 1, pp. 524-530; Liber V. D., No. 3, pp. 172-175; Liber P. L., No. 7, pp. 28-30; Liber E. I., No. 2, pp. 423-427; Liber E. I., No. 6, pp. 414-416; Liber E. I., No. 13, pp. 117-118; Liber G. S., No. 1, pp. 640-644.

<sup>82</sup> The attorney general almost always argued that the proceedings in the lower court were sufficient. Provincial Court Judgment Record, Liber W. T., No. 3, pp. 232-238 (William Dent), 238-247 (William Dent), 780-783 (William Dent); Liber T. L., No. 3, pp. 105-108 (William Dent), 108-110 (William Dent), 242-243 (William Dent); Liber P. L., No. 1, pp. 198-206 (William Bladen); Liber P. L., No., 2, pp. 224-225 (William Bladen); Liber T. P., No. 2, pp. 379-384 (William Bladen); Liber I. O., No. 1, pp. 524-530 (William Bladen); Liber V. D., No. 3, pp. 172-175 (William Bladen); Liber P. L., No. 7, pp. 28-30 (Daniel Dulany); Liber W. G., No. 2, pp. 463-465 (Daniel Dulany); Liber E. I., No. 2, pp. 423-427 (Michael Howard); Liber E. I., No. 6, pp. 414-416 (Daniel Dulany); Liber E. I., No. 9, pp. 95-98 (Daniel Dulany); Liber G. S., No. 1, pp. 640-644 (Henry Darnall).

At the provincial court for May of 1731, however, Michael Howard said that he had “nothing to say Why the Judgement” against James Mooney at the Dorchester County Court for November of 1728 for the theft of a bridle “for the Many Errors in

the Record & Proceedings therein should not be Reversed and held for none.”

Mooney was prosecuted on an information, pleaded guilty, and was sentenced to stand in the pillory for fifteen minutes, to receive twelve lashes on his bare back at the whipping post, and to pay his alleged victim, Richard Pearson, four shillings current money fourfold. Peter Taylor, “dissenting to this Judgment ag<sup>t</sup> the afd Mooney withdrew from the bench.” The provincial justices reversed Mooney’s conviction. Provincial Court Judgment Record, Liber R. B., No. 1, pp. 464-467.

For Mooney’s prosecution in the Dorchester County court, see Dorchester County Court Judgment Record, 1728-1729, pp. 76-77.

The fact that the attorney general almost always supported the clerk of indictments, regardless of how faulty his proceedings were, must say a lot about just how concerned he was supposed to be about due process. The job of the attorney general and the clerk of indictments was to get convictions: they were *not supposed* to care about due process. They were not supposed to care, that is, about justice.

<sup>83</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 198-206, 224; Somerset County Deeds, Liber A. B., pp. 61, 70-77, 115, 145. The quotes come from both sources.

<sup>84</sup> The witnesses to this indictment were Jane Ford, Robert Hodges, John Grear, and Walter Evans. Enoch Griffen himself did not appear at the provincial court to testify against Hammond, even though William Whittington, the sheriff of Somerset County, had summoned him, and for that failure the provincial justices fined him five pounds sterling. Provincial Court Judgment Record, Liber P. L., No. 1, p. 213-214. Possibly Griffen had endured as much humiliation as he could for now: it might have been worth the five pounds sterling to him to avoid the further humiliation of appearing at the provincial court.



The justices had also issued a *capias ad respondendum* to the sheriff of Somerset County for Joan Griffen, “but the sherriff made noe returne thereof.” *Ibid.*, p. 224.

The *capias ad respondendum* was simply a writ by which the court ordered the sheriff to have the defendant before the court at a specific time. It was the original writ in most civil as well as criminal actions. Blackstone, *Commentaries*, III, 281, xiv; IV, 318-319, 429, iii; *Black's Law Dictionary* (6th edition), p. 208; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 180-181; Ellefson, *A Book of Writs and Precepts*, alphabetized.

<sup>85</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 159-160. Hammond did have to pay his fees. *Ibid.*, p. 160. He also had to pay the fees on his recognizance to appear at this court and be of good behavior. When he appeared the justices discharged him from the recognizance “Paying fees.” *Ibid.*, p. 91.

<sup>86</sup> To “go without day” means that the justices did not fix a time for the defendant’s next appearance, and therefore he did not have to appear again. Blackstone, *Commentaries*, III, 399; *Black's Law Dictionary* (6th edition), pp. 1385, 1603.

<sup>87</sup> For Bladen’s confusion in three of the bills of indictment that he drew up against Macnemara, see Chapter 5, “Railroading, 1710-1713,” at Notes 96-103; Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 80-83. For still more of Bladen’s inadequacies as attorney general, see Ellefson, *William Bladen of Annapolis, 1673?-1718*, Chapter 6, “Attorney General.”

<sup>88</sup> For estreating a recognizance, see Blackstone, *Commentaries*, IV, 253; *Black's Law Dictionary* (6th edition), p. 552.

<sup>89</sup> For the use of the *scire facias* for the forfeiture of recognizances, see Blackstone, *Commentaries*, III, 416-417, 421-422; *Black's Law Dictionary* (6th edition),

p. 1346; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 262-263; Ellefson, *A Book of Writs and Precepts*, alphabetized; Chapter 4, “Not-So-Loving Spouses, 1707-1708,” at Notes 49-50.

<sup>90</sup> The justices might also have issued a *scire facias* for the recovery of ten pounds sterling from John Fleharty, Mary Lyon’s surety, but since the records of the Dorchester County court for this period have not survived there is no way to know.

<sup>91</sup> In July of 1711 Macnemara was probably still in England. Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729*, pp. 126-127, 137-138; Chancery Record 3, p. 833. See also Chapter 5, “Railroading, 1710-1713,” at Notes 89-97.

<sup>92</sup> For the writ of *procedendo*, see Blackstone, *Commentaries*, I, 353; III, 109-110; *Black’s Law Dictionary* (6th edition), p. 1203; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 235-236.

<sup>93</sup> Provincial Court Judgment Record, Liber I. O., No. 1, pp. 107-118.

<sup>94</sup> Baltimore County Court Proceedings, Liber I. S., No. A, p. 349.

<sup>95</sup> *Ibid.*, p. 334.

<sup>96</sup> *Ibid.*, p. 350. The defendants had to pay their officers’ fees.

<sup>97</sup> *Ibid.*, pp. 375, 397. Freeland did have to pay his officers’ fees.

<sup>98</sup> *Ibid.*, p. 378.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*, p. 398.

<sup>101</sup> *Ibid.*, p. 439.

<sup>102</sup> *Ibid.*, pp. 404-405. It is impossible to be sure when the court appointed an attorney for a pauper and when the court allowed the defendant to choose his own attorney. Richard Colegate was not only a long-time a justice of Baltimore County but also a long-time delegate to the lower house (Edward C. Papenfuse, Alan F. Day,

David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979-1985), I, 37-43, 228), and therefore could hardly have been a pauper. And by commissions of 10 July 1696, 27 March 1697, and 1? June 1697 an Anthony Drew was a non-quorum justice of Baltimore County. *Md. Arch.*, XX, 466; XXIII,129; TNA (PRO), Colonial Office 5, Vol. 714, p. 60 (photocopy in Library of Congress).

In June of 1714 the justices of Baltimore County appointed Macnemara counsel for five more defendants — Owen Sulivant, Ann Twine, Nicholas Rogers, Richard Colegate, and John Maddy. Baltimore County Court Proceedings, Liber I. S., No. A, p. 510. Sulivant was charged with “incontinently living with Ann Millner (*ibid.*, p. 400), Ann Twine with having a base-born child (*ibid.*, p. 334), and Colegate with turning the public road out of his plantation. *Ibid.*, p. 443. I have not found what Rogers and Maddy were charged with. At this same court the justices quashed all five prosecutions, with the defendants paying the fees. *Ibid.*, pp. 531, 573.

<sup>103</sup> Charles County Court Record, Liber D, No. 2, p. 7. The witnesses against John Blee were Edward Philpott, John Fendall, William Penn, Allwood Hardy, Henry Hardy, William Howard, and George Thomas. *Ibid.*

<sup>104</sup> *Ibid.*, p. 21.

<sup>105</sup> *Ibid.*, p. 61.

<sup>106</sup> *Ibid.*, p. 72.

<sup>107</sup> *Ibid.*, pp. 7, 72-73. The quotes to here in Blee’s case are from the Charles County Court Record cited in this note. From here on the quotes will be from Provincial Court Judgment Record, Liber I. O., No. 1, pp. 524-530.

By law the person who was convicted of theft was supposed to pay his victim

four times the value of the stolen goods. 1681, c. 3, *Md. Arch.*, VII, 201-203; 1692, c. 34, *Md. Arch.*, XIII, 479-481; 1699, c. 44, *Md. Arch.*, XXII, 553-555; 1702, c. 2, *Md. Arch.*, XXIV, 98-101; 1704, c. 25, *Md. Arch.*, XXVI, 266-268; 1715, c. 26, *Md. Arch.*, XXX, 304-308.

<sup>108</sup> The record does not say specifically that John Blee *was* whipped and pilloried, but the record often does not specify that. Examples are Prince George's County Court Record, Liber B, pp. 351c-352b, 441; Liber D, pp. 104-105; Provincial Court Judgment Record, Liber T. L., No. 3, pp. 563-565.

<sup>109</sup> Owings, *His Lordship's Patronage*, pp. 120, 124.

<sup>110</sup> I have not found the record of the return of the writ of error in the records of the Charles County court for March of 1712/13. Charles County Court Record, Liber E, No. 2, pp. 204-249. That information comes from Provincial Court Judgment Record, Liber I. O., No. 1, p. 527.

<sup>111</sup> John Rogers is noted as clerk of Charles County in the record of this case in *ibid.*, pp. 525, 528. See also Owings, *His Lordship's Patronage*, p. 150.

<sup>112</sup> For the writ of diminution, see Blackstone, *Commentaries*, IV, 390; *Black's Law Dictionary* (6th edition), p. 458; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 248; Ellefson, *A Book of Writs and Precepts*, alphabetized.

<sup>113</sup> See Notes 44 and 48 above.

<sup>114</sup> Provincial Court Judgment Record, Liber I. O., No. 1, pp. 524-530. While this case was in progress John Blee was in trouble again. From the records of the Charles County court for March of 1712/13:

Wee alsoe Present John Blee for assa[ult on th?]e Person of mary Possey In an unseasonable tyme of the [one or two words torn out: "night"?] In her owne house and Profane

swearing and Curseing abou[t the be]ginning of December  
Last by Information of Mary Possey[.]  
[John B]eale fforeman

Charles County Court Record, Liber E, No. 2, p. 207.

At the June court Blee pleaded not guilty of the assault but guilty of cursing and swearing and submitted himself to the mercy of the court. The justices fined him five shillings for his eight oaths and ruled that of “the trespas [*sic*] and assault [he] be Quit.” *Ibid.*, p. 255.

The fine for cursing and swearing was five shillings. 1704, c. 47, *Md. Arch.*, XXVI, 322. The record does not make clear whether Blee’s fine was a total of five shillings or was five shillings for each oath, but apparently the justices fined him for only one oath rather than for all eight.

<sup>115</sup> Charles County Court Record, Liber E, No. 2, p. 321.

<sup>116</sup> Prince George’s County Court Record, Liber G, pp. 721, 722. The court met on 22 March (*ibid.*, p. 718), and thus the date 1714/15.

<sup>117</sup> *Ibid.*, p. 763.

<sup>118</sup> *Ibid.*, pp. 763-780.

<sup>119</sup> *Ibid.*, p. 783.

<sup>120</sup> *Ibid.*, pp. 788, 789. The clerk, Robert Hall (*ibid.*, p. 785), left a blank space where the last name of Quinn’s surety should have appeared.

<sup>121</sup> *Ibid.*, Liber H, p. 3.

<sup>122</sup> *Ibid.*, p. 30.

<sup>123</sup> *Ibid.*, p. 37.

<sup>124</sup> *Ibid.*, pp. 37-38. The record says nothing about the fees in the case, but no doubt Quinn did have to pay them.

<sup>125</sup> 1704, c. 55, *Md. Arch.*, XXVI, 335-336, together with 1704, c. 25, *Md. Arch.*,

XXVI, 266-269.

<sup>126</sup> Prince George's County Court Record, Liber G, p. 721. Since the alleged hog-theft was alleged to have occurred before 1715, although Quinn's trial occurred after 1715, the two acts of 1704, rather than 1715, c. 48, *Md. Arch.*, XXX, 248-252, together with 1715, c. 26, *Md. Arch.*, XXX, 304-308, would be the relevant acts.

Why Macnemara did not argue that the bill of indictment was faulty because Haddock had not sent it before any grand jury does not appear. If the jury had found Quinn guilty he might have used that as the justification for a writ of error. It is possible, of course, that Macnemara did ask the justice to quash the bill of indictment and that they refused.

For Benjamin Berry as the foreman of the grand jury that presented Robins and Quinn, see Prince George's County Court Record, Liber G, p. 721.

The clerk, Robert Hall (*ibid.*, p. 31), recorded only one imparlance, but there must have been three, in June, August, and November of 1715.

<sup>127</sup> Provincial Court Judgment Record, Liber V. D., No. 2, pp. 362-364. But see Blackstone, *Commentaries*, IV, 306.

<sup>128</sup> The justices required Kenslagh to enter a bond of twenty pounds sterling with two sureties of ten pounds sterling each to guarantee that he would appear at the provincial court in July and that he would give Harris notice of the *certiorari*. Benjamin Griffith and William Howard became his sureties. The justices also required the three witnesses to the indictment, Michael Hauket, William Frisby, and Arthur Miller, to give bond of five pounds sterling each, with no sureties, to guarantee their appearance as witnesses at the provincial court for July.

<sup>129</sup> For the ambiguity about when Macnemara returned to Maryland in the spring of 1717 from his trip to England, see Chapter 1, "Character," Note 58.

<sup>130</sup> Provincial Court Judgment Record, Liber V. D., No. 3, pp. 78-81. In writing up the case the clerk of the provincial court left out the continuance in July of 1716, but the record of that is in *ibid.*, Liber V. D., No. 2, p. 70.

<sup>131</sup> Kenslagh's sureties were the fictitious John Doe and Richard Roe, which means that Kenslagh had to give only common bail to guarantee the payment of the defendant's costs if he did not succeed in his suit. That means that he was his own surety. The person who had to give special bail had to find actual people as his sureties. Ellefson, *The County Courts and the Provincial Court in Maryland*, pp. 186-187.

The person who lost a civil suit the justices held "in mercy," which means that he had to pay the amercement, a fee levied on both parties to a suit for the privilege of using the courts. Blackstone, *Commentaries*, III, 376; *Black's Law Dictionary* (6th edition), p. 81; Ellefson, *The County Courts and the Provincial Court in Maryland*, pp. 187-188, 575.

<sup>132</sup> Provincial Court Judgment Record, Liber V. D., No. 1, pp. 208-209.

<sup>133</sup> *Ibid.*, Liber V. D., No. 2, pp. 273-277.

<sup>134</sup> 1708, c. 1, *Md. Arch.*, XXVII, 337-342.

<sup>135</sup> *Md. Arch.*, XXVII, 383, 414; Committee of Accounts, 8 December 1708, in "Unpublished Provincial Records," *Maryland Historical Magazine*, XVII, No. 1 (March 1922), p. 52.

<sup>136</sup> These justices of oyer and terminer were not the same as the special justices of oyer and terminer who were appointed to try one case or more. For those justices, see Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 114-118. From 1705 until he died on 30 July 1709 (Owings, *His Lordship's Patronage*, p. 120) Governor John Seymour issued two commissions for the counties,

one called a commission of the peace, for criminal jurisdiction only, and the other called a commission of oyer and terminer, which included most of the provisions of the commission of the peace but also established the civil jurisdiction of the county courts. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 46-49.

The justices to whom the delegates were referring were Edward Blay, William Pearce, James Harris, Philip Hopkins, and William Pott. The sixth justice named in the commission of oyer and terminer for Kent County is John Carvill (Kent County Court Proceedings, 1707-1709, pp. 176-177), who was dead by the time this session of the assembly met. *Biographical Dictionary*, I, 39, 202.

<sup>137</sup> *Md. Arch.*, XXVII, 414, 420-421, 442.

<sup>138</sup> 1709, c. 9, *Md. Arch.*, XXVII, 481; Thomas Bacon, ed., *Laws of Maryland at Large* (Annapolis: Jonas Green, 1765), under 1708, c. 1, and 1709, c. 9.

<sup>139</sup> *Md. Arch.*, XXXIII, 173, 250, 251, 252. For Esther Smith and Esther Oldfield, see also *ibid.*, pp. 166, 246.

<sup>140</sup> *Ibid.*, pp. 180, 261.

<sup>141</sup> *Ibid.*, pp. 182, 261-262.

<sup>142</sup> *Ibid.*, pp. 182, 266.

<sup>143</sup> *Ibid.*, pp. 187, 269; 1718, c. 7, *Md. Arch.*, XXXVIII, 233-234. How much Dominick Kenslagh's being a Catholic might have had to do with his troubles we cannot tell. Michael James Graham, "Lord Baltimore's Pious Enterprise: Toleration and Community in Colonial Maryland" (Ph. D. dissertation: The University of Michigan, 1983), p. 379.

<sup>144</sup> Baltimore County Court Proceedings, Liber G. M., p. 201.

<sup>145</sup> Owings, *His Lordship's Patronage*, p. 151.



<sup>146</sup> Baltimore County Court Proceedings, Liber G. M., p. 203. Prosecutions for theft from persons unknown were not uncommon in eighteenth-century Maryland. Examples are Anne Arundel County Court Judgment Record, Liber I. B., No. 1, pp. 186, 187-188; Liber I. B., No. 4, pp. 400-401; Kent County Court Proceedings, Liber J. S., No. Y, pp. 200, 201-202; Charles County Court Record, Liber F, No. 3, p. 324; Queen Anne's County Court Judgment Record, 1744-1746, pp. 348-349; Provincial Court Judgment Record, Liber W. G., No. 1, pp. 540-541; Liber D. D., No. 14, pp. 682-683.

<sup>147</sup> Baltimore County Court Proceedings, Liber G. M., p. 273.

<sup>148</sup> Aubrey C. Land, *The Dulanys of Maryland: A Biographical Study of Daniel Dulany, the Elder (1685-1753) and Daniel Dulany, the Younger (1722-1797)* (Baltimore: The Maryland Historical Society, 1955; reprinted Baltimore: The Johns Hopkins Press, 1968), p. 10.

<sup>149</sup> Charles County Court Record, Liber B, No. 2, p. 608. Daniel Dulany was admitted to practice in the Prince George's County court in June of 1710, in the provincial court by July of 1711, in the Anne Arundel County court in June of 1712, and in the Baltimore County court in November of 1719. Anne Arundel County Court Judgment Record, Liber R. C., No. 1, p. 334; Baltimore County Court Proceedings, Liber I. S., No. C, p. 246; Prince George's County Court Record, Liber D, p. 318a; Provincial Court Judgment Record, Liber T. P., No. 2, p. 109.

Alan F. Day notes these references in *A Social History of Lawyers in Maryland, 1650-1775*, p. 319.

<sup>150</sup> At the Charles County court for November of 1710 Dulany produced his commission as clerk of indictments from William Bladen, the attorney general. Charles County Court Record, Liber D, No. 2, p. 4.

<sup>151</sup> William Bladen as attorney general appointed Dulany clerk of indictments of both Charles County and St. Mary's County by one commission dated 12 October 1710. Charles County Court Record, Liber D, No. 2, p. 1, from back.

<sup>152</sup> "As these deputy offices were of slight value and moreover prevented an incumbent's defending criminal cases, competent lawyers would not accept them." Owings, *His Lordship's Patronage*, p. 43. The clerks of indictments "had as a rule very limited revenues." *Ibid.*, p. 102.

Since defendants in criminal cases seldom had lawyers, Owings might exaggerate the importance of the clerk of indictment's not being able to defend criminal cases as a reason for the competent lawyer's refusal to accept the job. More likely the position simply took more time than the fees could justify for the more experienced of these ambitious men.

For the absence of counsel for defendants in criminal cases, see Blackstone, *Commentaries*, IV, 355-356; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 159.

<sup>153</sup> Aubrey C. Land says that when Dulany arrived in Maryland in the spring of 1703 he had "just turned eighteen" and that in August of 1709 he was "barely twenty-four years old." Land, *The Dulanys of Maryland*, pp. 3, 10. Thus, as his title indicates, Land accepts Richard Henry Spencer's date of 1685 for Dulany's birth. Spencer, "Hon. Daniel Dulany, 1685-1753 (the Elder)," p. 21.

<sup>154</sup> Charles County Court Record, Liber B, No. 2, p. 708.

<sup>155</sup> A barrow hog is a castrated one. *Webster's New World Dictionary of the American Language* (College Edition, 1959).

<sup>156</sup> By a commission dated 26 October 1710 Phillip Hoskins became the chief justice of the Charles County Court. Charles County Court Record, Liber D, No. 2,

pp. 1-3; *Md. Arch.*, XXVII, 494.

<sup>157</sup> Charles County Court Record, Liber D, No. 2, pp. 14-15. By 37 Henry VIII, c. 8, in Pickering, *The Statutes at Large*, V, 224-225, however, the words *vi et armis* were not necessary in indictments for “treason, murder, felony, trespass and divers other” crimes.

<sup>158</sup> Charles County Court Record, Liber D, No. 2, p. 7.

<sup>159</sup> *Ibid.*, pp. 20-21.

<sup>160</sup> *Ibid.*, pp. 144-145.

<sup>161</sup> For the cases against Christopher Vernon and John Quinn, see Text above at Notes 38-51 (Vernon) and 116-126 (Quinn).

<sup>162</sup> See Note 44 above.

<sup>163</sup> In the cases of Cornelius Ward Jr., Stephen Ward, Jonathan Ward, and John Taylor (Provincial Court Judgment Record, Liber W. T., No. 3, pp. 232-238; Somerset County Court Judicial Record, 1698-1701, pp. 86, 94-95); Thomas alias Dick Thomas Hedgcock (Provincial Court Judgment Record, Liber W. T., No. 3, pp. 780-783); and John and Elizabeth Ricketts. *Ibid.*, Liber T. L., No. 3, pp. 433-434.

For these cases, see also Ellefson, *William Bladen of Annapolis, 1673?-1718*, Chapter 6, “Attorney General.”

<sup>164</sup> Provincial Court Judgment Record, Liber P. L., No. 2, pp. 224-225. Since James Miller’s alleged theft was supposed to have occurred on 13 September 1703 even though the writ of error did not come before the provincial court until July of 1708, Wornell Hunt’s arguing that it did not appear from the record that any grand jury had found a bill against Miller is evidence that he believed that such prosecutions were illegal even before 1704.

<sup>165</sup> See Hugh F. Rankin, *Criminal Trial Proceedings in the General Court of*

*Colonial Virginia* (Williamsburg: Colonial Williamsburg, 1965), p. 55.

<sup>166</sup> See again Note 44 above.

<sup>167</sup> People presented at the Prince George's County court for June of 1709 and prosecuted in November on bills of indictment not endorsed *billa vera* or "A true bill" but signed by James Haddock, clerk of indictments, after the grand jury returned presentments endorsed "True Bill found" or "A True bill" and signed by James Beall, the foreman of the grand jury; all sources Prince George's County Court Record, Liber D:

*Mary Aud* — bastardy — pleaded guilty — child dead — father had run away — fifteen lashes — John Wilson refused to pay her fees, so justices ordered Josiah Willson, the sheriff, to deliver her to court at the end of her present servitude (and they would sell her for her fees): pp. 172-173, 235;

*John Trundle* — violating Sabbath — pleaded guilty — fined one hundred pounds of tobacco plus fees: pp. 173, 236;

*William Chillingsworth* — assault on Solomy Deheniossa, inn-holder — pleaded guilty — fined fifty pounds of tobacco plus fees: pp. 173, 237;

*Richard Ledger* — assault on Samuel Magruder — pleaded guilty — fined one hundred pounds of tobacco plus fees: pp. 173, 237-238.

Other illustrations of bills of indictment not endorsed or signed by the foreman of the grand jury are in Prince George's County Court Record, Liber D, pp. 111-112, 112-113, 113-114, 114, 115. A short search will turn up many more such cases.

<sup>168</sup> 1704, c. 55, *Md. Arch.*, XXVI, 335-336, together with 1704, c. 25, *Md. Arch.*, XXVI, 266-269.

<sup>169</sup> 1704, c. 86, *Md. Arch.*, XXVI, 420. In its acts of 1678 and 1692 the assembly does not mention any specific fee to the clerk of the county court for writing up a bill of indictment (1678, c. 9, *Md. Arch.*, VII, 73-75; 1692, c. 54, *Md. Arch.*, XIII, 512-514), but in 1699 the assembly allowed him eight pounds of tobacco per side. 1699, c. 49, *Md. Arch.*, XXII, 579.

In England it was the clerk of the court who wrote up bills of indictment. Baker, "Criminal Courts and Procedure at Common Law, 1550-1800," in Cockburn, ed., *Crime in England, 1550-1800*, pp. 19, 33, 300, Note 19.

As the paragraph in the text here indicates, in Maryland, apparently, the clerk of indictments drew up the bill of indictment and the clerk of the court wrote it up.

<sup>170</sup> 1708, c. 8, *Md. Arch.*, XXVII, 360-361.

<sup>171</sup> 1715, c. 48, *Md. Arch.*, XXX, 250.

<sup>172</sup> *Md. Arch.*, XXXIV, 28, 90-91.

<sup>173</sup> Owings, *His Lordship's Patronage*, p. 134.

<sup>174</sup> *Md. Arch.*, XXXIV, 46, 102-103.

<sup>175</sup> 1722, c. 5, *Md. Arch.*, XXXIV, 474.

<sup>176</sup> I have found no writs of error from the county courts to the provincial court in criminal cases after 1717 through 1721. From 1722 through 1755 the provincial justices reversed the judgments of the county courts five times, reversed the assize justices once, reversed the mayor's court of Annapolis once, and upheld a county court twice.

Thus in the twenty-three criminal actions in which writs of error went to the provincial court from 1699 through 1755, it reversed the county courts fifteen times, reversed the assizes twice, reversed the mayor's court of Annapolis once, and upheld the county courts three times. Two cases were abated by the death of the one defendant. In a twenty-fourth case the writ of error apparently never got to the provincial court.

For these cases, see Provincial Court Judgment Record, Liber W. T., No. 3, pp. 232-238, 238-247, 780, 780-783; Liber T. L., No. 3, pp. 105-108, 108-110, 242-243; Liber P. L., No. 1, pp. 198-206; Liber P. L., No. 2, pp. 224-225; Liber T. P., No. 2,

pp. 379-384; Liber I. O., No. 1, pp. 524-530; Liber V. D., No. 3, pp. 172-175; Liber P. L., No. 7, pp. 28-30; Liber W. G., No. 2, pp. 463-465; Liber R. B., No. 1, pp. 464-467; Liber R. B., No. 2, pp. 1, 3; Liber R. B., No. 3, p. 97; Liber E. I., No. 2, pp. 423-427; Liber E. I., No. 5, p. 2; Liber E. I., No. 6, pp. 414-416; Liber E. I., No. 9, pp. 95-98; Liber E. I., No. 13, pp. 117-118; Liber G. S., No. 1, pp. 640-644.

<sup>177</sup> The indictment was supposed to include the name of the defendant. Blackstone, *Commentaries*, IV, 306; 1 Henry V, c. 5, Pickering, *The Statutes at Large*, III, 3-4. “John Rayes woman” comes from the heading of the case.

<sup>178</sup> Prince George’s County Court Record, Liber B, pp. 382, 403a. Usually the servant who bore a bastard child had to serve her master additional time to reimburse the master for her lost time and his inconvenience. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 271-279; C. Ashley Ellefson, “The Functions of Punishments in Eighteenth-Century Maryland,” paper delivered at Hall of Records’ Conference on Maryland History in Honor of Morris L. Radoff, Annapolis, 14 June, 1974.

In 1704 the assembly referred to “the damage that shall accrew [*sic*] to such person to whom she is a Servant . . . .” 1704, c. 23, *Md. Arch.*, XXVI, 259.

<sup>179</sup> Prince George’s County Court Record, Liber B, pp. 382, 412a-413. In November of 1705 a Mr. Greenfield’s woman whose name is not included in the bill of indictment was also whipped for bearing a bastard child. *Ibid.*, p. 440a.

<sup>180</sup> Blackstone, *Commentaries*, IV, 306.

<sup>181</sup> Prince George’s County Court Record, Liber D, p. 173.

<sup>182</sup> *Ibid.*, pp. 173, 227-228.

<sup>183</sup> *Ibid.*, p. 234.

<sup>184</sup> *Ibid.*, p. 238. If the grand jurors did not know a suspect’s name when they

presented him, the clerk of indictments might discover it by the time he was prosecuted. At the Prince George's County court for June of 1705 the grand jurors presented "Joseph Addisons Servant man" for a breach of the peace, but by September of 1705 Haddock had drawn up a bill of indictment in which he charged that in Mount Calvert Hundred on 18 April 1705 John Hinton, who in the heading of the case is identified as John Addison's man, assaulted John Jackson. After Hinton pleaded guilty, the justices fined him one hundred pounds of tobacco. Joseph Addison, identified here again as Hinton's master, paid Hinton's fees. The bill of indictment is not endorsed "a true bill" or *billa vera* and is not signed by the foreman of the grand jury, though Paul Bewsey, the foreman of the grand jury, did sign the presentment. Only James Haddock signed the bill of indictment. Prince George's County Court Record, Liber B, pp. 383, 412a.

Something similar happened to Jane Duxberry eight years later. At the Prince George's County court for November of 1713 the grand jurors presented an unnamed servant woman living at William Prather's for bastardizing. After Jane Duxberry at the March court for 1713/14 pleaded guilty to the presentment but refused to name the father of the child the justices decided that the child was a mulatto, ordered Jane Duxberry to serve Prather for an additional six months for the trouble of his house, and ordered Prather to deliver Jane Duxberry to the court when her service expired so that they could deal with her according to law. They also ordered that the child, whose sex is not noted, serve William Hunter or his assigns until it reached the age of twenty-one and directed that Prather receive six hundred pounds of tobacco out of the next county levy for keeping the child until this session of the court. *Ibid.*, Liber G, pp. 455, 605.

The law provided that mulatto bastards — "the Issues or Children of such un-

natural and inordinate Copulations” — would be servants until they reached the age of thirty-one. 1704, c. 23, *Md. Arch.*, XXVI, 259-260.

The justices’ dealing with Jane Duxberry according to law means that they would sell her into an additional servitude of seven years for bearing a mulatto bastard. *Ibid.*

This was not Jane Duxberry’s first bastard child. At the Prince George’s County court for November of 1711 she confessed to having a bastard child and named Paul Bradford as the father. After the justices fined her six hundred pounds of tobacco William Prather gave security to guarantee the payment of her fine and fees. Prince George’s County Court Record, Liber G, p. 130.

I have not checked to see what, if anything, happened to Bradford.

<sup>185</sup> Under Elizabeth I and James I the concern for due process might also have been pretty casual. A person might be sentenced on an indictment that did not include the date of the alleged offense, and the indictment might include the wrong name, the wrong occupation, the wrong place of residence, or the wrong date of the alleged crime. J. S. Cockburn, *Calendar of Assize Records, Home Circuit Indictments, Elizabeth I and James I: Introduction* (London: Her Majesty’s Stationery Office, 1985), pp. 76-86.

<sup>186</sup> *Md. Arch.*, XXXIII, 171-172. Here the provincial justices were complaining about Macnemara’s escaping from charges against himself, but clearly he used those same talents as counsel for other defendants. For the attack of the four provincial justices on Macnemara, see Chapter 11, “Disbarred Again, 1718,” Notes 62-74.

<sup>187</sup> “It is far safer to know too little than too much.” Samuel Butler, *The Way of All Flesh* (Modern Library edition; New York: Random House, n. d.), p. 26.

<sup>188</sup> Prince George’s County Court Record, Liber B, pp. 360a, 351c-352b. The



numbering of the pages in this part of this volume is confusing. Page 360a comes before pages 351c and 352b.

<sup>189</sup> For Christopher Vernon, see Text above at Notes 38-51. Of course at the Anne Arundel County court for June of 1706 Macnemara had more than a year's more experience than he had at the Prince George's County court for March of 1705.

<sup>190</sup> One of Wornell Hunt's ten arguments on a writ of error in the case of James Miller at the provincial court for July of 1708 was that the indictment against Miller at the Calvert County court for June of 1704 referred both to the value and to the price of the stolen goods when actually it should have referred only to their price. The provincial justices reversed Miller's conviction even though he had pleaded guilty. Provincial Court Judgment Record, Liber P. L., No. 2, pp. 224-225.

<sup>191</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 555, 563-565.

<sup>192</sup> *Ibid.*, p. 567. The date on which John Gresham appeared is not included in the record. The court opened on 24 April 1705. *Ibid.*, p. 553.

<sup>193</sup> *Ibid.*, Liber T. B., No. 2, p. 75.

<sup>194</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 525-527.

<sup>195</sup> Provincial Court Judgment Record, Liber V. D., No. 3, pp. 106, 225, 244; Liber P. L., No. 4, pp. 77-80. The statuses of Thomas Docwra and Thomas Walker are not included in this record.

<sup>196</sup> *Ibid.*, Liber P. L., No. 4, p. 235.

<sup>197</sup> There is an illegible word here, but it looks like the marriage was "seddainly [or "seddanily," "saddainly," "saddanily": "suddenly"?] designed to be solemnized."

An archaic meaning of "sudden" is prompt or immediate. *Webster's Third New International Dictionary of the English Language Unabridged* (1981). Thus apparently the meaning is that the marriage was to be solemnized promptly.

<sup>198</sup> In copying Anne Richardson's declaration, the clerk of the provincial court, Thomas Bordley (Owings, *His Lordship's Patronage*, p. 140; Provincial Court Judgment Record, Liber T. L., No. 3, p. 567), or his deputy wrote the two key words almost exactly twice as large as the rest of the words in the record. The key words appear in four places in the record — in the declaration, in Crook's plea, in Anne Richardson's replication, and in the verdict of the petit jury —, but the clerk wrote them in the very large script only in the declaration.

<sup>199</sup> Provincial Court Judgment Record, Liber T. L., No. 3, p. 567; Anne Arundel County Court Judgment Record, Liber G, p. 673; Liber T. B., No. 1, p. 17.

<sup>200</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 620-623; Liber T. B., No. 2, pp. 187-188. One of the jurors in Anne Richardson's case was Matthew Beard, whose ear a petit jury at the provincial court for May of 1704 acquitted Macnemara of biting off on 10 April 1704. Provincial Court Judgment Record, Liber T. L., No. 3, pp. 266, 268-270; Chapter 3, "Early Troubles, 1703-1710," at Notes 2-9.

At the Baltimore County court for June of 1708 the grand jurors indicted James Crooke, identified as a gentleman, for "incontinently Cohabiting" with Elizabeth Hayes, the wife of John Hayes, a planter. The indictment is called a presentment and is endorsed *billa vera* and signed by (Abr?)aham Taylor, the foreman of the grand jury. Through his attorney, Wornell Hunt, Crooke got a writ of *certiorari* to remove the case to the provincial court, where in July of 1709 Hunt argued that the "Indict<sup>t</sup> or presentm<sup>t</sup>." was "not sufficient in Law to Compell" Crooke to answer it. The provincial justices agreed and quashed the "Indictment or presentm<sup>t</sup>." Provincial Court Judgment Record, Liber P. L., No. 2, pp. 684-687.

<sup>201</sup> James Maxwell first appears as a non-quorum justice of Baltimore County in a commission of 11 April 1692. Baltimore County Court Proceedings, Liber F,

No. 1, pp. 171-172. He appears again in commissions of 20 July 1692 (*ibid.*, pp. 233-234) and 30 July 1694. *Md. Arch.*, XX, 109. He was not included in the commission of 10 July 1696 (*Ibid.*, p. 466) because he became sheriff. *Ibid.*, XXII, 80, 95.

After Maxwell served as sheriff he returned to the court. There are no court records for Baltimore County after 1696 until November of 1708, when Maxwell sat as the ranking justice. Baltimore County Court Proceedings, Liber I. S., No. A, p. 1. Thus he might already have been chief justice by that time, but he did become chief justice in October of 1716 at the latest (Baltimore County Court Proceedings, Liber I. S., No. A, p. 60), and he was last commissioned as chief justice on 3 June 1727. Commission Records, 1726-1786, p. 3.

Edward C. Papenfuse and his colleagues say that Maxwell became chief justice of Baltimore County in 1714. *Biographical Dictionary*, II, 584-585.

<sup>202</sup> Index of Marriages at Maryland State Archives in Annapolis; Provincial Court Judgment Record, Liber P. L., No. 1, pp. 38-39.

<sup>203</sup> According to Aubrey C. Land:

Dulany remained loyal to Macnemara through . . . [Macnemara's] amazing troubles . . . . Dulany may even have profited from his early association with the insolent, daring lawyer. In 1713 he was introduced to the High Court of Chancery by Macnemara, who brought him into five equity cases as joint counsel.

Land, *The Dulanys of Maryland*, p. 17.

### *Chapter 3*

#### *Early Troubles, 1703-1710*

Within about a year of his arrival in Maryland Thomas Macnemara was already in trouble. His battles with authority would continue for the rest of his life, and when he died he still had four indictments outstanding against him. While Macnemara surely was no paragon, however, anyone willing to seek out the evidence rather than simply parrot the charges of his enemies might reasonably conclude that his problems resulted less from his own misbehavior than from the determination of his enemies to destroy him.<sup>1</sup> He was too independent, too courageous, and too competent for the taste of the authority of eighteenth-century Maryland.

At the provincial court for May of 1704, the same session at which Macnemara was admitted as an attorney there, the campaign against him began. At that court the grand jurors in the conventional wording of the indictment for assault charged that in Annapolis on 10 April 1704 Macnemara, a gentleman from Middleneck Parish in Anne Arundel County,<sup>2</sup> with malice forethought assaulted Matthew Beard with swords, staves, clubs, fists, and teeth and “did beat wound and evilly intreat [him] and with his teeth did bite and tear” Beard’s right ear “off the head” and “other harms to him . . . did” so that “of his life it was dispaired.” Since like other indictments the wording of the indictment for assault was conventional,<sup>3</sup> from the wording of this indictment we can get no idea of just how serious Macnemara’s alleged assault might

have been.

When Macnemara appeared and requested counsel the justices appointed William Bladen to represent him. Bladen argued that Macnemara should not have been charged with the assault because at the time mentioned in the indictment Matthew Beard assaulted Macnemara with swords and staves. Then, apparently less than thrilled by his assignment, Bladen made clear his lack of enthusiasm for his client by adding that Macnemara was ready to prove that the assault mentioned in the indictment was Beard's assault on Macnemara "unless . . . he the said Thomas with force and Arms . . . did assault and evilly intreat the said Matthew as in the indictment" was supposed.

Macnemara and Bladen were later to become bitter enemies, if they were not already,<sup>4</sup> and Bladen's unenthusiastic defense might have contributed to Macnemara's contempt for him. By the end of the year — on 4 December 1704 — Governor John Seymour would make Bladen attorney general,<sup>5</sup> so possibly Bladen's ambition took precedence over his duty as a defense attorney in a criminal case.<sup>6</sup>

William Dent, the attorney general, insisted that Macnemara had in fact assaulted Beard and had bitten off his ear as the grand jurors alleged and asked that a petit jury decide the case. When Macnemara agreed, the justices ordered John Gresham, the sheriff of Anne Arundel County,<sup>7</sup> to summon twelve petit jurors, who apparently believed Macnemara's contention that Beard had assaulted him first and found him not guilty of assaulting Beard. The justices therefore discharged Macnemara.<sup>8</sup>

Although the petit jury apparently believed Bladen's argument that Beard had attached Macnemara first, Beard was not charged with any crime.<sup>9</sup>

In reporting this incident to the Board of Trade in 1712 the members of the

council, in their apparent determination to place Macnemara in the worst possible light, blatantly exposed their contempt for truth. He “bitt of [*sic*] a boy’s Eare,” they told the Board of Trade,<sup>10</sup> thus packing two misrepresentations into five short words. They say nothing about Macnemara’s acquittal, and Matthew Beard was hardly a boy. On 26 February 1702/3, thirteen-and-a-half months before Macnemara was supposed to have bitten off his ear, the council appointed Beard “Marshal or Water Bailiff of the Western Shore;” sometime before 27 October 1703, he became acting armorer of the province;<sup>11</sup> and sometime between 16 August and 18 November 1708, four-and-a-half years after the incident, the mayor, recorder, and aldermen elected him one of the ten common councilmen under the first charter of Annapolis.<sup>12</sup>

Whether or not Macnemara had actually bitten off Beard’s ear does not appear, but if he did he was not alone. In this rough-and-tumble age brawlers went for the accessible parts, and the ear was a very handy appendage for a brawler to clamp his teeth onto. Biting an ear or biting it off appears not to have been unusual.<sup>13</sup>

This would not be the last time that Macnemara would be charged with assault after somebody else started a fight. At the provincial court for May of 1716 a petit jury acquitted him of assaulting William Dobson on the eighth Monday after Easter of 1714 after he argued that he was only defending his servant, James Horsley, after Dobson attacked *him*, and since the petit jurors acquitted him they must have accepted his argument.<sup>14</sup> In his alleged assault on Mary Navarre, of which he was acquitted at that same court, Macnemara’s argument is not preserved,<sup>15</sup> but it is possible that he was the one who was attacked in that instance also.<sup>16</sup>

Within five months of his admission to practice in the Anne Arundel County court Macnemara was again in trouble there. At the Anne Arundel County court for

August of 1704 he had to give security of ten pounds sterling to guarantee his appearance at the September court and for his good behavior in the meantime after he was accused of an unexplained breach of the peace and submitted to the judgment of the court. Gabriel Parrott, a gentleman from Anne Arundel County, was his surety in the same amount.<sup>17</sup> On 12 September 1704, because of the inconvenience of holding the Anne Arundel County court at the same time that the assembly was sitting, the court adjourned to the second Tuesday in November without doing any business,<sup>18</sup> and when Macnemara appeared in November the justices discharged him from his recognizance.<sup>19</sup>

Since the justices did not punish Macnemara for this alleged breach of the peace but only required him to give bond for his good behavior, they must not have considered his offense very serious — if it had occurred at all.

If there is some ambiguity about what happened between Thomas Macnemara and Matthew Beard, there is no ambiguity about Thomas Roper's assault on Macnemara a year later. At the provincial court for April of 1705 the grand jury charged that at Mount Calvert in Prince George's County on 19 April 1705 Roper, a bricklayer from South River Hundred in Anne Arundel County, assaulted Macnemara "and then and there did beat wound and evilly intreat [him] So that of his life it was dispaired." After Roper pleaded guilty and submitted to the judgment of the court, the justices fined him one hundred pounds of tobacco and committed him to the sheriff until he paid his fine and his fees.<sup>20</sup>

When later that court Roper did pay his fine and fees the justices required him to enter a bond of twenty pounds sterling to guarantee his appearance at the next provincial court and to guarantee his good behavior in the meantime. Joseph Hall, a gentleman from Anne Arundel County, became his surety in the same amount.<sup>21</sup>

When Roper appeared in September the justices discharged him with his fees.<sup>22</sup>

Macnemara's troubles continued. At the Anne Arundel County court for January of 1705/6 the two servants, Margaret Deale and Manus Knark, complained against him,<sup>23</sup> and at the Prince George's County court for March of 1706 the justices fined him and William Stone one hundred pounds of tobacco each "for giving one another Abusive Language before y<sup>e</sup> Court."<sup>24</sup>

In May of 1707 Macnemara was back before the provincial court, where he appeared according to his recognizance of an unrecorded amount. When nothing appeared against him the justices discharged him with his fees.<sup>25</sup>

Why Macnemara had to appear under bond at this court is not recorded, but it might have had something to do with a run-in that he had with James Carroll. At this same court Macnemara requested that since Carroll had assaulted him and threatened to assault him again the justices require Carroll to enter a bond for his good behavior and for his appearance at the next provincial court. The justices did require Carroll, who was already in court, to give security of twenty pounds sterling to guarantee his appearance at the next provincial court and to guarantee his good behavior toward Macnemara as well as toward all of her Majesty's "Leige People" in the meantime. Amos Garrett, a gentleman from Anne Arundel County, became Carroll's surety of ten pounds sterling.<sup>26</sup>

On 30 September 1707 Governor John Seymour disbarred Macnemara for his alleged misbehavior, and when Carroll appeared at the provincial court that opened that day the justices discharged him from the recognizance but required him to enter a new one of twenty pounds sterling, with one surety of ten pounds sterling, again to guarantee his appearance at the next provincial court and his good behavior toward Macnemara as well as toward all of her Majesty's other liege people in the meantime.



This time Samuel Young became his surety.<sup>27</sup> Finally, at the provincial court for April of 1708 the justices discharged Carroll from his the recognizance because nothing appeared against him.<sup>28</sup> Macnemara, still disbarred, might not have been in the province to pursue the issue.<sup>29</sup>

At their next court the provincial justices quashed an indictment against William FitzRedmond for allegedly libeling Macnemara. At the Anne Arundel County court for November of 1707 the grand jurors charged that on 20 August 1707 FitzRedmond, who was a gentleman, a Catholic,<sup>30</sup> and Charles Carroll's nephew,<sup>31</sup> "Did write Publish and Affix upon the stadt house Dore" in Annapolis "a false, scandalous and Malicious libell" in which he said that Macnemara was "Known to be a fore-sworne false and Notorious Villain" and that "Therefore None but those of his stamp" would "Credit him." FitzRedmond posted the libel, the grand jurors alleged, with the malicious intention of defaming and blackening Macnemara's "good Name fame and Reputation and him into scandall to bring Amongst the good People" of the province as well as among his many clients.<sup>32</sup>

The justices ordered the sheriff of Anne Arundel County, Josiah Wilson,<sup>33</sup> to arrest FitzRedmond and have him before the Anne Arundel County court for January of 1707/8.<sup>34</sup> When at that court FitzRedmond asked for a continuance until March the justices required him to give security of twenty pounds sterling to guarantee his appearance at that court and to guarantee his good behavior in the meantime. Wornell Hunt, a gentleman from Anne Arundel County and a lawyer, became his surety for ten pounds sterling.<sup>35</sup>

When FitzRedmond appeared at the Anne Arundel County court for March of 1707/8 he produced a writ of *certiorari* to remove the case to the provincial court for April of 1708. The justices of Anne Arundel County then ordered him to give secu-

rity of ten pounds sterling to guarantee his appearance at that court. Wornell Hunt once again became his surety, this time for only five pounds sterling. The justices also required Charles Vansweringen, Edmond Benson, John Beale, and Thomas Bordley to give security of five pounds sterling each, "Every One of them for themselves and not One for the other," to guarantee their appearance at that provincial court as witnesses against FitzRedmond.<sup>36</sup>

At the provincial court for April of 1708 the justices ordered FitzRedmond to give security of ten pounds sterling to guarantee his appearance at the assizes<sup>37</sup> for Anne Arundel County, which would meet for the first time on Friday, 7 May 1708. Once again Wornell Hunt became his surety for five pounds sterling.<sup>38</sup> The assize justices<sup>39</sup> did not hear the case, but at the provincial court for July of 1708 the justices quashed the indictment against FitzRedmond because it was "not sufficient in Law,"<sup>40</sup> and apparently FitzRedmond was not indicted again for the alleged libel.<sup>41</sup>

During these years Macnemara began to accumulate some property. In 1705 he bought a house in Annapolis, and from 1705 through 1714 he patented "over 1700 acres in Baltimore and Kent Counties." In 1706 he bought one hundred acres of land in Anne Arundel County. In 1710 and 1715 he bought other houses in Annapolis, and "in 1717-1718 he bought 600 acres in Calvert and Baltimore counties." At his death he "probably" owned more than two thousand acres of land as well as two servants and eighteen slaves.<sup>42</sup>

On 19 August 1707 Macnemara embarked on his eleven-month odyssey with his wife Margaret and John Seymour, the governor and chancellor of the province,<sup>43</sup> over Margaret Macnemara's petition for separate maintenance.<sup>44</sup> Six weeks to the day after that battle began Seymour disbarred Macnemara. He tried to make it appear

that he was concerned about the behavior of *all* attorneys, but it is clear that his action was directed primarily, if not exclusively, against Macnemara.

On 30 September 1707 Seymour and his council considered the “ill behaviour of Severall Attorneys” who “often Endeavour[ed] to be very popular and independent of the Government.” Seymour and his council were convinced by daily experience that the people of Maryland suffered

Extreamly by the Corruption Ignorance and Extortion of  
Severall Attorneys Admitted to practice in the provinciall and  
County Courts without any Qualification of Honesty  
Experience or Learning in the Laws

that would entitle them to such practice. To the great scandal of justice, this corruption, ignorance, and extortion resulted in the stirring up and multiplying of vexatious and litigious suits, which resulted in turn only in “the private Lucre and Gaine . . . of such Corrupt” practitioners and unreasonable expense to the public as well as to private persons. Beyond that, because of the “senseless and insignificant brawles Repetitions & impertinent Cavills,” the sessions of the courts were “Consumed and taken up for the most part in trifles.”

To prevent such evils, to guarantee that only those men who had “a Competent share of Learning honesty and Experience (the Circumstances of the Country Considered) to recommend them to such practice” would be admitted as attorneys, to guarantee “a due & orderly Regulation of . . . [the] Courts,” and for the general good of the people of the province, Seymour with the advice of his council issued a proclamation in which he ruled that nobody would be admitted as an attorney in the province unless he had been “for some time” a member of one of the “Inns of Courts or Chancery in England” or had submitted to an examination of his ability, honesty, and good behavior before the governor and his council and had received a certificate

of such examination.<sup>45</sup>

In issuing this proclamation Seymour quite clearly had a double motive: to gain control over the admission of attorneys, whom previously the justices of the courts had admitted to practice, but especially to deny Macnemara the right to practice law in the province.<sup>46</sup> When three of the attorneys of the provincial court — William Bladen, Wornell Hunt, and Robert Goulesborough — immediately applied for readmission to the bar Seymour and his council were “pleased to Say that they had not the least objection to any of them” and “readily agreed” to reinstate them, apparently with no questions asked. Next came Richard Dallam, one of the attorneys of the provincial court and the Calvert County court, whom Seymour and his council similarly readmitted to practice immediately, again apparently with no examination.<sup>47</sup> The next day Seymour and his council admitted George Plater and Cornelius White to practice in the provincial court;<sup>48</sup> on 18 February 1707/8 they readmitted John Coode, William Stone, John Kirk, John Willinger, and Thomas Boon to practice in the county courts; and on 23 March 1707/8 they admitted Richard Hunter to practice, also in the county courts.<sup>49</sup>

Macnemara was not so fortunate. When he petitioned for readmission immediately after Richard Dallam, he pointed out that more than three years earlier he had been admitted to practice as an attorney in the provincial court as well as in the Anne Arundel, Calvert, and Prince George’s county courts. In those courts he was “Concerned in a great many Causes Ripe for Tryall,” but since by Seymour’s proclamation he could not plead in those courts he could not complete those cases unless Seymour and his council restored him to his practice. He hoped that they would call him before them to examine his capacity and admit him to practice, since he had no other means to maintain himself and his family. Aware of the blemishes in his past, he

promised “a reformation of his former past behaviour.”

Seymour and his council were not impressed, and they did not bother even to examine Macnemara.<sup>50</sup> “Reflecting on the many misdemeanours” of which he had been guilty “and how often he had promised Reformation but [of which he] had yett given so little proof,” they unanimously resolved that since he had “often Contemned and Affronted the Justices as well as abused his Clyants” he should not be readmitted to practice in any of the courts in Maryland until they “were better Satisfied of his Change of Behaviour.” They told Macnemara of their decision immediately and added that “then it . . . [would] be time enough for him to apply” for his reinstatement as an attorney.<sup>51</sup>

In suspending Macnemara from the practice of law Seymour probably was acting illegally. In November of 1706, in response to a petition to Queen Anne by Thomas Hodges, a barrister in Barbados whom Governor Sir B. Granville had suspended from the practice of law, Attorney General Edward Northey gave his opinion that it was up to the court, not the queen, to suspend an attorney. Northey believed that for “a contempt committed in Court, and recorded by the Court,” an attorney could be suspended “for some time . . . from practicing in that Court.” If he was “legally convicted of any enormous crime” that would make him unworthy of practicing, he could be disbarred forever. Without such a reason, however, no judge could suspend an attorney from his practice, and it had not been usual for the queen’s predecessors to meddle in such matters. Rather they had left them to their judges and their courts of justice.<sup>52</sup>

Thus for two reasons Seymour’s suspension of Macnemara was improper. First, Seymour was acting neither on contempts “committed in Court, and recorded by the court” nor on “any enormous crime” of which Macnemara had been convicted.

Every one of his charges against Macnemara was vague and undocumented. Second, it was up to the judiciary, not the executive, to discipline attorneys.

Macnemara's disbarment probably resulted less from any misbehavior on his part than from Seymour's dislike of Irishmen<sup>53</sup> combined with Macnemara's courage and skill as an attorney, and it was probably no accident that Seymour disbarred Macnemara when he did. At the previous provincial court — for May of 1707 — Macnemara helped Joseph Hill, who had been a delegate from Anne Arundel County since 1704,<sup>54</sup> gain an acquittal for misprision of treason as an alleged accessory of Richard Clarke, who would be hanged on 9 April 1708 on a bill of attainder for alleged "Treasons and Felonies,"<sup>55</sup> but the justices threw out the acquittal and ordered a new trial.<sup>56</sup> If Macnemara was disbarred he would not be able to help Hill in his new trial. Nor would he be able to help any of Clarke's other alleged accomplices, some of whose trials would be coming up at the provincial court that opened on 30 September 1707, the very day of the disbarment.<sup>57</sup>

Two years earlier the assembly had outlawed Clarke. In May of 1704 the grand jury at the provincial court returned three indictments against him, two of them for "forgery or counterfeiting private marks and tokens" and the third for murdering his Scotch servant William on 3 August 1703 by beating him on the head and body with an oak stick. After a petit jury at that court found him not guilty of the murder the justices ordered him to give security of fifty pounds sterling, with three sureties of twenty-five pounds sterling each, to guarantee his appearance at the next provincial court and to guarantee his good behavior in the meantime.<sup>58</sup> Possibly because the justices feared further acquittals the two indictments for forgery or counterfeiting were not tried,<sup>59</sup> but they required Clarke to give security of one hundred pounds

sterling with three sureties of fifty pounds sterling each to guarantee his appearance at the provincial court for October of 1704, to guarantee that he would not leave that court without its license, and to guarantee his good behavior in the meantime.<sup>60</sup>

Clarke did not appear at the provincial court in October,<sup>61</sup> nor did he appear in April of 1705,<sup>62</sup> and the next month the assembly outlawed him. It provided that because it appeared to the members of the assembly that Clarke and his accomplices had “began and carried on” “a very wicked and treasonable conspiracy” to seize the magazine and the governor, overturn the government, and with the heathen Indians “Cutt off and Extirpate” the inhabitants of the province Clarke would be outlawed and would forfeit all of his goods, chattels, lands, and tenements unless he surrendered for his trial within twenty days of the end of that session of the assembly.<sup>63</sup>

Clarke did not surrender, and finally on Tuesday, 8 April 1707, the delegates read for the first time the bill of attainder against him.<sup>64</sup> The next day they passed the bill on its final reading,<sup>65</sup> and the upper house passed it the day after that.<sup>66</sup>

Also on the ninth Seymour and the upper house got William Bladen’s opinion that Joseph Hill could be arrested even while the assembly was in session<sup>67</sup> and so ordered his arrest.<sup>68</sup> The next day — Thursday, 10 April 1707 — they sent the delegates the depositions of John Spry, Thomas Brereton, and Thomas Ricketts, which the three men had given before Seymour and his council earlier in the week and in which Spry and Brereton implicated Hill in the effort to help Clarke get his wife and some of his property out of the province.<sup>69</sup> After considering the depositions the next afternoon, the delegates voted to expel Hill from the lower house until he was cleared of the charges.<sup>70</sup>

At the provincial court a month later<sup>71</sup> Hill appeared under a bond of two hundred pounds sterling. The justices discharged the bond and committed him to the

custody of Josiah Wilson, the sheriff of Anne Arundel County,<sup>72</sup> and the grand jury indicted him.<sup>73</sup>

The grand jurors charged that Hill, knowing that Clarke was outlawed and had not surrendered himself, several times in Annapolis before and after 14 April 1706 “held Communication and Treasonable Correspondence” with Daniel Wells, a carpenter from Anne Arundel County,<sup>74</sup> and “Divers other Trayterous and Disloyall Persons” with whom Clarke “Trayterously Practiced and Treated to subvert Distroy [*sic*] and over Throw” the government of the province and “to spill the blood of Divers” good subjects of the queen.

In spite of Seymour’s “Divers Proclamations” requiring everyone “to Deliver and Apprehend” Clarke and “forbidding them at their uttmost Perrill to Conceale or Keep any Correspondence with him,” the grand jurors continued, Hill, “little Weighing but altogether Neglecting the true Affection [and] Due ffaith and Allegiance” that he and all others should bear to the queen, neglecting also “the support and Maintainance he ought to Give and yeild [*sic*] for the Preservation of the Peace and quiet” of the queen’s “Good Milde and Easy Government,” and “the ffear of God before his Eyes not having, but by the Instigation of the Devill being seduced,” at his dwelling plantation on Severn River in St. Anne’s Parish in Anne Arundel County on Sunday, 30 March 1707, having “agreed to keep and hold Correspondance [*sic*]” with Clarke, received from Thomas Brereton, a laborer, a packet of letters sent to him from Clarke, who used “the false and Counterfeit Name of Robert Garrett,” the content of which letters was altogether unknown to the grand jurors.

Further, the grand jurors continued, contriving “to Aid Abett Conceale and Comfort” Clarke to whatever extent he could, Hill on 30 March 1707 went with Brereton to South River and on board the sloop *Margaret’s Industry* discussed with



John Spry, skipper of the sloop, how he “might privately and Clandestinly [*sic*]” take to Clarke various goods and chattels, which were worth fifty pounds sterling and which had belonged to Clarke but which now had been forfeited to the queen because of Clarke’s outlawry, and in that way to “Comfort Aide and Cherrish” Richard Clarke.<sup>75</sup>

By negotiating and managing Clarke’s concerns, the grand jury continued, Hill was trying to prevent him from being exposed to the many of her Majesty’s other subjects who out of the just regard they had for the queen and the peace and welfare of the province would have tried to apprehend Clarke “in order to bring him to Justice and Condigne Punishm! for his Demeritts.” As a result of Hill’s direction and contrivance, John Spry did navigate the sloop up the South River and into Beard’s Creek, where on Thursday and Friday, the third and fourth of April 1707, in pursuance of Hill’s directions he “tooke on board . . . [Clarke’s] Pretended goods.”

Finally, the grand jurors charged, on 30 March 1707, “in holding such Correspondance with [and] Contriveing how to skreene and Conceale” Clarke and “Neglecting what in him lay” to bring Clarke to justice for his treason, Hill “Did then and there Comitt [*sic*] a manifest Contempt Neglect and oversight” by making light of Clarke’s treasons, “Cherrishing Aiding and Comforting him” and thereby better enabling him “to Continue [to] Carry on and Practice his wicked and Execrable Trayterous Designes . . . to the Great Danger and Disturbance of the Quiet” of the government and “Contrary to the True ffaith and allegiance” that he ought to have borne toward the queen.<sup>76</sup>

After the grand jury returned the indictment endorsed *billa vera* the justices committed Hill to the custody of Josiah Wilson, the sheriff of Anne Arundel County, until he appeared to answer the charges. On 20 May, exactly one week after the court

opened, Wilson brought Hill into court, where the justices on Hill's request assigned Macnemara as his counsel.<sup>77</sup> Macnemara told the court that Hill was ready to come to trial and that he had his witnesses already in court. Hill then ask that he be tried immediately. He had copies of the indictment and the panel of petit jurors, though he had not had them for as long as the law provided, and he waived the right to any delay to which the law entitled him.<sup>78</sup> Immediately therefore the justices asked him how he would plead, and after he pleaded not guilty the petit jury acquitted him.

Bladen, however, was not satisfied with his failure, and he moved that since the jury "was Lett Go at large after they were sworn and before they Gave their . . . Verdict [*sic*]" the justices should set it aside and grant the prosecution a new trial.<sup>79</sup> The justices continued the case until the next morning in order to consider the argument.

Either the trial was a long one or else the jurors had been allowed to go at large for a long time before they returned their verdict, since the trial had begun on Tuesday, 20 May, and "To Morrow Morning" was Friday the twenty-third. On that day the justices ruled that since the bailiff had allowed the jurors to "Go at large" after they were sworn and charged but before they gave their verdict the verdict should be set aside and Hill should be tried again. They ordered that Hill enter a recognizance of five hundred pounds sterling, with two sureties of £250 sterling each, to appear at the next provincial court, "to stand to and abide" by the judgment of the court, not to depart that court without its license, and to be of good behaviour in the meantime. Hill did provide the security, with Richard Warfield and Joseph Howard, two gentlemen from Anne Arundel County, as his sureties.<sup>80</sup>

No doubt still hoping for a conviction in that projected second trial, when in a letter to the Board of Trade on 10 June 1707 John Seymour reported that Hill had been expelled from the lower house "for adhering to, assisting and corresponding

with” Clarke, he did not add that Hill had been acquitted of misprision of treason.<sup>81</sup>

In any future prosecution Macnemara would not be able to assist Hill, but Hill was never tried again. When in September of 1707 he appeared at the provincial court the justices ordered him to enter a new recognizance of five hundred pounds sterling, with two sureties of £250 each, for his appearance at the provincial court for April of 1708. Hezekiah Linthicum and Edward Rumney, two more gentlemen from Anne Arundel County, became his sureties.<sup>82</sup>

In April of 1708 Hill appeared once more, and once more the justices required him to give security “in the same Manner and forme” as before. This time Andrew Wellssly, still another gentleman from Anne Arundel County, joined Joseph Howard as his sureties.<sup>83</sup>

Thus Hill was still waiting for his second trial when on 9 April 1708, the day after the session of the provincial court ended<sup>84</sup> and therefore while a large crowd might still have remained in Annapolis, Richard Clarke was hanged. With Clarke already acquitted at the provincial court for May of 1696 of stealing seven pieces of eight worth £0.31.6 sterling from William Angli(n?) on 22 October 1695,<sup>85</sup> at the Anne Arundel County court for January of 1703/4 of maintenance<sup>86</sup> and at the provincial court for May of 1704 of the murder of his servant William on 3 August 1703,<sup>87</sup> Seymour and the three members of his council and the two additional provincial justices who were present — William Holland was the second ranking justice of the provincial court as well as a member of the council<sup>88</sup> — were unwilling to take a chance on further acquittals by allowing him his day in court and on Saturday, 3 April 1708, decided instead to hang him on the following Friday on the bill of attainder from April of 1707.<sup>89</sup>

Apparently the reason for all of the delays in the proceedings against Hill is that

Bladen had lost his witnesses and therefore was not ready for trial. When Hill appeared at the provincial court again on 6 July 1708, three months after Richard Clarke was hanged, Bladen finally informed the court that he could not prosecute Hill any further because he could not produce his witnesses, who were not residents of the province and had forfeited their recognizances. Therefore the justices discharged Hill with his fees.<sup>90</sup> In September of 1708 Hill returned to the lower house, having missed only the last three days of the previous session,<sup>91</sup> and continued to represent Anne Arundel County there for the next fifteen years.<sup>92</sup>

Having once helped Joseph Hill escape a conviction for misprision of treason, Macnemara had to be disbarred before he could provide the same assistance to any of Clarke's other alleged accomplices or to Hill in his second trial. Seymour and his council did try to disguise their primary motive by trying to make it appear that they were concerned about the behavior of several attorneys, but, as the members of the council make clear in their letter to the Board of Trade on 18 July 1712, it was really Macnemara they were after. Seymour, "taking notice" of Macnemara's defense of Clarke's alleged abettors, "and that not without affronts to . . . [the] Government," with the advice of his council suspended him from practicing law in the province.<sup>93</sup>

While Macnemara's disbarment appears not to have hurt Joseph Hill, it did create problems for his other clients. At their court for November of 1707 the justices of Anne Arundel County refused to allow him to practice because he did not have a certificate from the governor,<sup>94</sup> and then they noted that Macnemara's suspension from his practice left several of his clients without lawyers. In order to prevent injury to those clients the justices ordered that any client of Macnemara who had not already hired another attorney in a case already depending could in his own proper

person — without the aid of a lawyer<sup>95</sup> — sue out subpoenas, join issue — enter a declaration<sup>96</sup> or a plea<sup>97</sup> — in any case that had not been joined, and sue out execution in any judgment that he had already obtained with Macnemara as his attorney.<sup>98</sup> Thus these clients could either hire new lawyers or do themselves what attorneys were supposed to do.

While James Carroll's recognizance for the alleged assault on Macnemara and the indictment against William FitzRedmond for his alleged libel against him were still pending, and while Macnemara was still resisting Seymour's order to provide separate maintenance for his wife,<sup>99</sup> Macnemara, already disbarred, got into still more trouble. On 17 February 1707/8, Seymour and four members of his council<sup>100</sup> heard Peter Perry's complaint that although the chancery court granted him the status of pauper in his suit against Roger Woolford and had assigned Macnemara as his counsel Macnemara had taken twenty shillings and one hundred pounds of bacon from him as fees. Now Macnemara, "having . . . by his Misbehaviour rendred himself uncapable of doing him any Service," refused to return Perry's money and bacon to him.<sup>101</sup>

The council ordered Josiah Wilson, the sheriff of Anne Arundel County,<sup>102</sup> to ask Macnemara, who was "at the Door," whether "he had taken any such Reward."<sup>103</sup> Macnemara, whose troubles had made him neither more submissive nor more tactful, responded that "he reserved the Answer untill he knew whether it was a Crime" and that "what he had gott none should take it from him."<sup>104</sup> For that "Sawcy Answer and other Audacious behaviour" Seymour ordered Wilson to put Macnemara "in the Stocks one full hour bare Breeched." Later, however, Seymour "was pleased to remitt half an hour a great Gust arising."<sup>105</sup>

Placing a person in the stocks “bare Breeched” was unique even in brutal eighteenth-century Maryland. Thomas Macnemara might have been the only person to achieve that honor:<sup>106</sup> Seymour and his council were determined to humiliate him even beyond conventional humiliation and pain of sitting in the stocks. Beyond the humiliation, of course, was the discomfort, not only of the stocks themselves but also of the season of the year. It was the middle of February, and therefore Macnemara would suffer not only the discomfort of having no padding between the plank and his bare behind and the probable abuse of the spectators but also of the chill in the air. A “great Gust” in Annapolis in February can be very cold.

Sitting bare-breeched in the stocks apparently did nothing to make Macnemara more submissive for long, though two days after he sat in the stocks he did finally agree to provide separate maintenance for his wife.<sup>107</sup> The next month he was in trouble again. At the Anne Arundel County court for March of 1707/8 the justices fined him one hundred pounds of tobacco for his unexplained misbehavior in court,<sup>108</sup> which he must have been attending even though he was still disbarred.

If sitting bare-breeched in the stocks did nothing to make Macnemara more malleable, a fine of a hundred pounds of tobacco was not likely to have much effect, and he continued to follow his own drummer. In October of 1708 he did nothing to increase John Seymour’s affection for him when, still disbarred in Maryland and apparently commuting back and forth to Pennsylvania,<sup>109</sup> he appeared in the lower house to represent the residents of Annapolis in their dispute with Seymour over the charter for that city. Apparently Macnemara’s sitting bare-breeched in the stocks had reduced his prestige no more than it had reduced his spirit.

As early as 2 May 1696 the delegates, after Governor Francis Nicholson proposed that the residents of Annapolis be allowed certain privileges,<sup>110</sup> suggested that

if he issued a charter for the city he could grant the inhabitants “all reasonable priviledges and imunities” that he considered appropriate.<sup>111</sup> Nothing was done, however, and when finally on 8 September 1704 John Seymour recommended that the delegates enquire why St. Mary’s City should have two delegates to the lower house and, since Annapolis was the seat of government, whether it might be proper to “encourage” it by giving it two representatives,<sup>112</sup> the delegates were not enthusiastic. They referred the issue to the next assembly,<sup>113</sup> and in that session they apparently simply ignored it.<sup>114</sup>

So nothing was done for four years. Finally on 16 August 1708 Seymour and his council, after considering whether it was proper that St. Mary’s City send two delegates to the lower house, since it did not have “a Mayor Recorder & [alder?]-men” to choose them, decided that for want of such persons no citizens of St. Mary’s City could be legally returned to serve in the lower house but nevertheless resolved that “a Writt [of election] be sent directed to such persons.”

Then, after either Seymour or one of the members of his council proposed that Annapolis be erected into a city with the privilege of sending two delegates to the lower house and with some other small privileges that Seymour and the council would agree on, the council decided that that would be very proper, since Annapolis was the seat of government, was a growing place, and had “the most Buildings & People Inhabiting therein.”<sup>115</sup>

Determined that Annapolis should have a charter, Seymour must already have had it written up, since he issued it that very day.<sup>116</sup> The mayor, recorder, and aldermen — whom Seymour named in the charter —, and the five “senior or first” members of the common council — the ten members of which the mayor, recorder, and aldermen had chosen —, elected William Bladen and Wornell Hunt to represent

Annapolis in the lower house in the next assembly,<sup>117</sup> which met on Monday, 27 September 1708.<sup>118</sup> They were sworn the next day,<sup>119</sup> and during the early part of the session both men actively participated in the business of the lower house.<sup>120</sup>

In issuing that first charter Seymour appears to have had at least three less-than-generous motives. First, by issuing it without consulting the delegates he pre-empted the lower house of the assembly and thus, if he had succeeded in his attempt, would have provided a precedent for the governor's acting on his own, with the advice of his council but without the participation of the delegates. The members of the upper house would still have participated with the governor because they were also members of his council. Seymour therefore appears to have been using the issuing of the charter as an opportunity to consolidate the political power of the governor and his council, which really means the governor, at the expense of the lower house and therefore of the voters of the province.

Second, Seymour reduced participation in government simply by reducing the number of voters in Annapolis. Men who lived in the city and who had formerly been able to vote in elections for delegates from Anne Arundel County would lose the right to vote in those elections because Annapolis would have two delegates of its own, and these men would no longer be able to vote in elections for those delegates. Only the mayor, the recorder, the six aldermen, and the five senior of the ten members of the common council would have the right to participate in the election of delegates from the city.<sup>121</sup>

Nor would most of the "ffreemen and inhabitants" of Annapolis who had been able to vote in elections for commissioners of the city under the "Act for keeping good Rules and Orders in the Port of Annapolis" of 1696, by which the assembly established the first government of Annapolis,<sup>122</sup> be allowed any longer to vote for



local officials. Only the mayor, recorder, aldermen, and common council would participate in the annual choice of the mayor, who had to come from among the aldermen;<sup>123</sup> on the death or removal of the mayor the aldermen would choose a replacement from among themselves;<sup>124</sup> the mayor and the aldermen would choose future recorders and from the members of the common council would fill vacancies among the aldermen;<sup>125</sup> and the mayor, the recorder, and the six aldermen would choose the original ten common councillors from among the “inhabitants and freeholders” of the city and then would fill vacancies on the common council as they occurred.<sup>126</sup> Thus even the members of the common council would have no voice in choosing the recorder or filling vacancies among the aldermen or on the common council itself, and only the five senior members of the common council would have a voice in choosing delegates. All special elections would be held within a month of the death or the removal of the official.<sup>127</sup>

This arrangement would restrict participation in government in Annapolis to sometimes six — or even fewer if two or more of the eight leading officials died within a month of each other<sup>128</sup> —, sometimes seven, sometimes eight, sometimes thirteen, and sometimes up to eighteen men, depending on what was being done, and therefore would solidify the power of a very narrow elite in the city, would keep “undesirables” out of government, and might even serve as a precedent for reducing participation in government throughout the province.

Third, by providing representation for Annapolis in the lower house Seymour might increase his influence there by getting two of his favorites elected as delegates from the city.<sup>129</sup> William Bladen, an alderman, and Wornell Hunt, the recorder — both of whom Seymour had appointed to their positions<sup>130</sup> —, were in fact chosen as delegates.

But not everyone was happy. Some of the inhabitants of Annapolis objected, and in a petition to the lower house they challenged not only some of the provisions of the charter but also Seymour's right to issue it at all.<sup>131</sup> On the afternoon of Thursday, 30 September 1708, the Committee of Election and Privileges referred the petition "against the electing of Delegates to serve the said City" to the consideration of the whole House, where the petitioners desired to be heard. The delegates decided to consider the petition the next morning and ordered the mayor, recorder, and aldermen of Annapolis to attend the House, "with the Record of their Charter by which they claim to send Delegates to the Assembly," to respond to the petition. They also ordered the petitioners to attend the House "and make good their Petition."<sup>132</sup>

On Friday, however, the delegates did not get to the charter until late in the day. Apparently as their last piece of business that day they read the charter, the petition, and the writ of election by which Hunt and Bladen had been elected; called into the House the mayor, the aldermen, and the members of the common council of Annapolis along with Thomas Macnemara, Thomas Docwra, and other petitioners against the charter and the election of delegates from Annapolis; and heard the complaints of the petitioners.<sup>133</sup>

Macnemara, who appears to have been a central figure in drawing up the petition and might even have instigated it, was the logical person to lead the opposition to Seymour, since he not only had great courage but also had at least three good reasons to try to embarrass the governor. First, exactly one year earlier, on 30 September 1707, Seymour disbarred Macnemara at the same time that he hijacked the right to admit and suspend attorneys. Second, four-and-a-half months later Seymour gave Macnemara a second cause for grievance when in the dispute over Peter Perry's fees he ordered that Macnemara sit in the stocks for "one full hour bare Breeched."<sup>134</sup>

Third, in Macnemara's nasty dispute with his wife Margaret, which went on from August of 1707 or earlier until 19 February 1708/9, Seymour three times had ordered him jailed after he refused to respond to his wife's petition to the chancery court for separate maintenance. Finally, on 19 February 1707/8 — two days after sitting in the stocks bare-breeched — Macnemara agreed to provide the separate maintenance.<sup>135</sup>

So when Seymour issued his charter only six months after Macnemara spent half an hour sitting bare-breeched in the stocks in the middle of February, the feisty lawyer might have welcomed the opportunity to add a little stress to the governor's life. In any case his unique punishment did not intimidate him.

On Saturday — 2 October 1708 — the lower house allowed Hunt and Bladen to respond to the objections of the petitioners.<sup>136</sup> Macnemara then responded to them, and the delegates ordered the petitioners, Hunt and Bladen, the other aldermen, and the members of the common council of Annapolis to withdraw while the House “debated the whole Matter.” When “the Question was put whether or no the Governor had Power to grant the Charter in Manner and fform as it . . . [was] granted,” the delegates unanimously voted that he did not.<sup>137</sup> That vote unseated Bladen and Hunt.<sup>138</sup>

The delegates did not even honor Seymour and the upper house with an official report of what they had done. When on Monday morning a delegate asked whether it was necessary to send Seymour and his council a message relating to the charter, the House decided that it was not.<sup>139</sup>

Seymour, however, did not need a formal message from the lower house to know what was going on. As the last piece of business on Saturday afternoon he asked the members of the upper house whether, “considering how dilatory and irregular” the delegates had been, it would be convenient to prorogue the assembly

to a later date. The upper house unanimously agreed that it would be convenient to prorogue the assembly to 29 November if Seymour thought that that would be a good idea.<sup>140</sup>

On Monday afternoon — 4 October 1708 — Seymour summoned the delegates to the council chamber and in his usual condescending way made his contempt for them clear. He was aware, he told them, that “in an Extrajudicial Way” they had taken it upon themselves to interpret his commission from the queen in a way contrary to its “express Tenor.” Revealing an arrogant paternalism that must have been maddening to the delegates, who yielded to nobody in arrogance, Seymour told the delegates that they might in good manners have allowed him to be a competent judge of that commission, since he had “worn it so many years.”<sup>141</sup> He could not avoid the conclusion, he continued illogically, that the delegates’ action had resulted “from an ill grounded heat and Rashness not at all becoming the Station” they filled, since nobody pretended to control the debates and resolutions of the lower house concerning the election of its members.

Apparently it did not occur to Seymour that if he conceded the right of the lower house to control the election of its own members he must have been conceding its right to expel the delegates from Annapolis.

The delegates would have shown much more discretion, Seymour continued, if they had proceeded to the business of the House rather than in an unwarrantable manner to have “expell’d the members whose commission for sitting” in the lower house was “derived from the same fountain of Authority” as their own.<sup>142</sup> Since the awkward step of the lower house was derogatory to the queen’s prerogative, the delegates could not blame him for the cost to the poor country for this unprofitable session.

All generosity, however, Seymour would give the delegates another chance. To the many favorable concessions that he had already made to them he would add one more: he would have them return to the lower house and seriously reflect on what they had done.<sup>143</sup>

The delegates did not back down but in their response to Seymour that same afternoon expressed their concerns. First, some of the freeholders and inhabitants of Annapolis believed that the charter deprived them of some of their rights and privileges as Englishmen, particularly of the right to vote for delegates to the lower house. Seymour had provided that the mayor, the recorder, and the aldermen together with the five senior common-councilmen would elect the two delegates,<sup>144</sup> and thus men who had been able to vote for delegates from Anne Arundel County would not be able to vote for delegates from Annapolis.

Nor would those former voters be able to vote for members of the common council. Seymour had not only named the mayor, the recorder, and the six original aldermen of Annapolis and had provided that those officials would choose ten other “of the most sufficient” inhabitants of the city as the first members of the common council, but he had also provided that the mayor, the recorder, and the aldermen would fill vacancies on that body.<sup>145</sup>

Second, the delegates claimed, the charter made the residents of Annapolis liable to be sued for small debts that the laws of the province empowered “any Single Justice to hear and determine.” This complaint resulted from Seymour’s provision that the mayor, recorder, and aldermen or any three or more of them could hold a court of hustings in which they could try all civil cases in which the demand did not exceed £6.10.0 sterling, with no provision that any one of them alone could hear cases of small debts,<sup>146</sup> as the county justices could.<sup>147</sup> The absence of jurisdiction

of the single justices would increase the costs of suits for small amounts.

The delegates might also have been expressing their fear that if Annapolis had a court of its own the Anne Arundel County court, as well possibly as the provincial court and the chancery court, would be moved out of the city<sup>148</sup> and that therefore the people who depended on the business that the courts brought to town would lose that business.

Third, the delegates claimed, the charter took from the public “those Lands and Buildings they . . . [had] purchased and erected.”<sup>149</sup> Here apparently the delegates were concerned about Seymour’s giving the corporation control over the land that had already been laid out under the act of 1696. This included the town common and public pasture, which the people of the town had had to help pay for if they wanted to use it<sup>150</sup> and the use of which they might now be denied unless they paid again. Another concern might have been that people who had built warehouses at the ends of the “rolling roads”<sup>151</sup> or had constructed keys, wharfs, and warehouses at docks<sup>152</sup> would lose their investments. The corporation itself, using public money, might also have built some warehouses at the ends of the rolling roads.<sup>153</sup>

Fourth, the charter deprived the people of Annapolis of unspecified “other Priviledges.” One of the things the delegates might have been concerned about here is that Seymour had made Wornell Hunt the recorder of Annapolis even though he had not resided in the province for three years, as the “Act for the Advancement of the Natives and Residents of . . . [the] Province” required,<sup>154</sup> and so had deprived some other citizen of Annapolis, who had been in the province for three years, of that employment.

It was not out of any disrespect for Seymour or desire to reduce either the prerogative or the power that the queen gave Seymour that the delegates were

challenging his right to establish the charter of Annapolis, they assured him, but they observed that the power to grant charters was not plainly expressed in his commission. They hoped that he would grant no more charters until the queen's intentions were more clear.

When Seymour's power to grant charters was "more plainly express," the delegates promised, they would readily concur in the granting of a charter for Annapolis, but they included so many provisos that they actually were promising nothing. They would concur in the granting of the charter provided that "all the Inhabitants and Freeholders of Annapolis" requested it, that they retain "their equal priviledges in choosing their representatives" and all other privileges to which the laws of England and the province entitled them, and that "the publick Lands and Buildings may not be infringed but Secured to the uses for which they were purchased and Erected."<sup>155</sup>

Bright enough to realize that the chance that *all* of the "Inhabitants and Freeholders" of Annapolis would request the granting of the charter was so remote as to be impossible and disgusted with the delegates over their challenge to his issuing the charter as well as over their other offensive proceedings, Seymour had had enough. On Tuesday morning he called the delegates into the council chamber again and dissolved the assembly after a session of only nine days. There were several pieces of business to be done, he told them, but to his great sorrow they had refused to consider that business but had acted in such an unwarrantable and unparliamentary way that he did not know how to retrieve them. If he accepted their position he would leave to posterity precedents that not only would be prejudicial to the queen's prerogative and the privileges of her subjects but also would be a bad example to future assemblies.

Seymour listed the sins of the delegates. Before they had qualified themselves

by taking the appropriate oaths they had chosen a Speaker, debated privileges, voted, rejected the clerk whom Seymour had appointed and legally commissioned and had chosen a clerk themselves, and made “an Adjournment without any” — without, apparently that is, a clerk whom Seymour had legally commissioned.

Since there was “no Retrieving this Misfortune,” which the heats of the delegates had led them into, Seymour dissolved the assembly and would order new elections.<sup>156</sup>

Before the assembly met again two months later Seymour, possibly realizing that the elections had added nothing to his influence in the lower house<sup>157</sup> and that he needed all the support he could get, was willing to make concessions to the inhabitants of Annapolis. If they would not challenge his right to issue the charter, he would broaden the franchise,<sup>158</sup> and he could deal with the lower house later.

On 18 November 1708 or before, therefore,<sup>159</sup> the mayor, the recorder, the six aldermen, the ten common-councilmen, and seventeen other inhabitants of the city,<sup>160</sup> in what appears to have been a political contrivance to circumvent the delegates, petitioned Seymour to broaden the right to vote in Annapolis. The petitioners pointed out that Annapolis had “a greater number of inhabitants than . . . any other place” in the province and asked that any freeholder — any person, that is, who owned a whole lot with a house built on it —, any person residing in the city and having a visible estate of twenty pounds sterling, and any person who after serving five years in any trade in the city became a housekeeper and inhabitant and took the oath of a free citizen be allowed to vote for delegates, provided only that nobody could vote in the election of delegates until he had been a free citizen for three months. They also petitioned that all freemen be allowed to vote to fill vacancies in the common council.<sup>161</sup>



On 18 November Seymour granted the petition and ordered that the “corporation” — the officials whom Seymour himself had appointed — prepare a charter that would satisfy the petitioners;<sup>162</sup> on 22 November he issued the new charter;<sup>163</sup> and on 29 November the new assembly met.<sup>164</sup>

If Seymour’s concessions satisfied the more privileged inhabitants of Annapolis, the delegates were more difficult to please. In the new charter Seymour had confronted only one of their complaints — about the franchise —, and he had done nothing to reassure them about his right to issue the charter.

On 1 December the delegates took up the challenge. They informed Seymour that if he had any further instructions from the queen about granting charters and erecting cities they would like to see them.<sup>165</sup> Seymour had no further instructions, but he and the members of the upper house tried to bluster through. Seymour was well satisfied, they told the delegates that same day, that he had ample authority from the queen to erect cities, boroughs, castles, and forts.<sup>166</sup> Cities and boroughs were “to be Erected by Privileges & Grants from the Crown.”

What Seymour had done as a favor to Annapolis, the seat of government, he had done “with a true regard to the Interest & honour” of the province, and since it was her Majesty’s prerogative the delegates had no right to question it. If Seymour had made any irregular step he was answerable only to the queen.

Seymour and the members of the upper house hoped that the delegates would not delay other business of greater importance by continuing to question Seymour’s right to issue the charter. It was no dishonor, they lectured the delegates, “for men of Reason to give up a groundless opinion on better Satisfaction.” It was plain that her Majesty had empowered Seymour to erect cities and boroughs, and it was not walls but incorporating that made them so.<sup>167</sup>

The delegates asked for a conference,<sup>168</sup> and the upper house agreed.<sup>169</sup> By this time the delegates appear to have given up their challenge to Seymour's issuing the charter and were concerned only about its provisions and their participation in the process. The conference committee would consider only "the Privileges granted by Charter to the City of Annapolis."<sup>170</sup>

In the committee's report the next day there was no challenge to Seymour's claim to the right to issue the charter, but the delegates would participate in the process. The committee suggested that the assembly confirm the charter with an act by which it would guarantee the citizens of Annapolis the liberty and privileges mentioned in the new charter as long as they did not in any way "infringe the Liberty & Priviledges of the publick either in regard to publick Land or Buildings" that the public had purchased "and to which they . . . [were] lawfully and rightfully entituled" but that public lands and buildings in Annapolis would continue to be used for the purposes for which they were purchased and designed. It suggested further that the justices of Anne Arundel County would continue to hold their court in the statehouse and would continue to have jurisdiction in Annapolis, that the laws made by the corporation would be binding only on the inhabitants of Annapolis and non-residents who had dealings with the citizens of the city, and that the delegates to the lower house from Annapolis have only half the allowance of the delegates from the counties. The committee was also concerned that the maximum tolls that the corporation could levy on goods sold at the fairs in Annapolis were excessive. If goods sold at fairs were worth two thousand pounds, the conferees pointed out, the toll could amount to one hundred pounds. They believed that it would be "more for the Benefit of the City" if no tolls were mentioned.<sup>171</sup> Finally the conferees pointed out that the person Seymour had appointed recorder of Annapolis — Wornell Hunt — was

not qualified to hold that office, since he had not lived in the province for three years.

The delegates accepted the report, suggested that “the Petitioners for the Charter” write up a bill to implement the suggestions of the committee, and requested the concurrence of the upper house. The upper house suggested that the bill to confirm the charter include a clause to allow Wornell Hunt to be the recorder of Annapolis, since he was “a Person very fitt for that Station.” The delegates agreed.<sup>172</sup>

The assembly therefore passed “An Act Confirming and Explaining the Charter to the City of Annapolis.” Together the new charter and the confirming act satisfied the petitioners and the delegates, though they did not get everything they wanted. By the charter Seymour gave the inhabitants of Annapolis the franchise they asked for,<sup>173</sup> and by the act confirming the charter the assembly provided that public lands and buildings would continue to be used as they had been used in the past and that the courts that had been held in Annapolis would continue to be held there. The justices and the sheriff of Anne Arundel County would continue to have jurisdiction in the city, thus guaranteeing that the individual county justices would continue to have jurisdiction in cases of small debts. The laws of the corporation would not be binding on anyone outside the city; the delegates from Annapolis would receive only one-half of the “wages” of other delegates;<sup>174</sup> and the town common would “be reserved & remaine to the Use of the proper owner or owners” unless they received proper satisfaction.

The assembly also specifically exempted Wornell Hunt from the provisions of the act for the advancement of natives and did allow him to remain recorder of Annapolis even though he had not lived in the province for three years.<sup>175</sup>

Finally, the assembly changed Seymour’s provision on the maximum tolls the corporation could charge on goods sold at fairs. While by the charter Seymour pro-

vided that the mayor and alderman could establish a toll of not more than six pence on every beast sold at a fair and one-twentieth of the value of any commodity sold<sup>176</sup> — the same provision as in Seymour’s earlier charter<sup>177</sup> —, the assembly provided that there would be no toll on animals or goods worth less than twenty shillings current money and limited to six pence the toll on animals or goods sold for five pounds or less and to twelve pence the toll on animals or goods sold for more than that amount.<sup>178</sup>

Thus everybody gave, and everybody got. The inhabitants of Annapolis got a charter that satisfied them; the inhabitants of Annapolis and the delegates conceded Seymour’s right to issue the charter; and Seymour conceded the delegates’ right to confirm and explain it. But the delegates were the real winners: they had forced Seymour to allow them to participate in establishing the corporation.<sup>179</sup>

Wornell Hunt and Thomas Bordley had been elected delegates for Annapolis,<sup>180</sup> but the lower house would not admit them until after the act confirming the charter was passed.<sup>181</sup> Since Seymour did not sign the bill until the last day of the session,<sup>182</sup> Annapolis was not represented in the lower house until the next session, which met on 25 October 1709.<sup>183</sup>

The primary significance of the charters of 1708 is not that they, along with the “Act Confirming and Explaining the Charter to the City of Annapolis,” raised Annapolis to the status of a city, but rather that the quarrel over the charters provided the occasion for creating two early precedents for the limitation of executive power. The first precedent is that the petitioners against the first charter together with the lower house of the assembly forced Governor Seymour to back down and issue a new charter with a wider franchise than his first charter allowed. The second is that the delegates forced Seymour to allow the assembly, and therefore the lower house, to

participate in the granting of the second charter. The two precedents together were early contributions to the American legacy of the limitation of the executive.

Just how important Macnemara was in the petition to the lower house against Seymour's first charter for Annapolis is not clear. He was one of the signers of that petition,<sup>184</sup> and, still smarting over Seymour's ordering him set in the stocks bare-breached only seven-and-a-half months earlier,<sup>185</sup> he might have been one of the instigators. Instigator or not, as the spokesman for the petitioners he must not have been the least among them.

If the choice of Macnemara as spokesman for the petitioners is not evidence of his actual popularity it must be evidence of the respect that many people had for him, but he was not involved in the petition to Seymour.<sup>186</sup> Why he was not involved does not appear, but it is not difficult to imagine Seymour's making Macnemara's exclusion one of the conditions of the settlement.

While the assembly was quarreling over Seymour's charter of Annapolis, his order that anyone who had not attended one of the Inns of Court or Chancery in England had to have a license from the governor before he could practice law in Maryland was still in effect. During the nine-day session of the assembly that met on 27 September 1708<sup>187</sup> Seymour and the delegates found other things to fight about before Seymour dissolved it in a rage,<sup>188</sup> but during the following session, which met on 29 November 1708<sup>189</sup> and during which the assembly confirmed charter of Annapolis, the lower house protested Seymour's other grab for power also. Macnemara became a pawn, and while Seymour did give up his claim to the right to license attorneys he got Macnemara's disbarment written into law.

Revealing their distrust of Seymour, on 8 December 1708 the Committee of

Aggrievances of the lower house reported that requiring attorneys to get certificates from the governor and his council was contrary to the traditional practice in Maryland and would hinder the attorneys from doing their duty for fear of incurring the displeasure of the governor and his council. The members of the Committee also feared that through their favor the governor and his council, unlike the justices, would admit many attorneys who were not qualified to practice law. Finally, it seemed a grievance that once the justices admitted an attorney the governor and his council could disbar him for no legitimate reason.

After hearing this report the delegates resolved that Seymour's insistence on the right to license attorneys was in fact a grievance and that they ask him to restore the authority of the justices of the various courts to admit and suspend attorneys.<sup>190</sup>

Many of the delegates had a direct interest in the transfer of power from the county justices to the governor and his council that would result from Seymour's licensing of lawyers. At least twenty-seven — and possibly thirty — of the fifty delegates were themselves county justices<sup>191</sup> whose own personal power would be reduced if Seymour had his way.

Two days after they resolved that Seymour's claim to the power to license attorneys was a grievance — on 10 December — the delegates adopted their message to Seymour and the upper house. "With all Submission and respect due" to him and his council, it seemed to them that his order was a grievance, since it was "contrary to the known practice of all courts of Law in Great Brittain and the usual practice" of all of the courts in the province. It would also result in "the manifest Prejudice of her Majesty's good and Loyal Subjects" in Maryland because it would be a great hindrance to the attorneys "in performing their Dutys for fear of incurring" the displeasure of Seymour and his council. The justices' not having the power to suspend

attorneys for their misdemeanors would also be likely to encourage the attorneys to be insolent. Finally the delegates presumed that Seymour would agree that the county justices would be the best judges of the qualifications of the attorneys who practiced in their courts. Of course they knew that Seymour would agree to no such thing, but as part of their strategy they would force him to deny their presumption.

For these reasons the delegates humbly asked Seymour to restore “the Several Courts to their antient Rights of admitting & Suspending” attorneys. Those courts, the delegates were convinced, would take all due care to admit only those attorneys who by their fair and honest practice would deserve admission.<sup>192</sup>

Seymour and the members of the upper house were not convinced. The delegates had “misrecited” Seymour’s order, since they had not acknowledged his provision that anyone who had attended one of the Inns of Court in England would have the right to practice in Maryland. The delegates were not acquainted with the practice of the courts in Great Britain: Seymour’s order was not “contrary to the known practice of all the Courts” there. Seymour and the members of the upper house were well informed “that neither the Chancery Queens Bench Common pleas or Exchequer admitt[ed] the Practitioners in their several Courts.” Rather “The Serjeants and Barristers on Certificate of the Benchers<sup>193</sup> . . . [were] called by the Queen’s Majesty,” and “the several Attornys [were] admitted and sworn by the master of the Queens Bench & Prothonotaries of the Common Pleas.”

Nor had the practice in Maryland existed long enough to make it an “antient right.”

Finally, Seymour and the upper house claimed that the government’s taking care that only men of known integrity and ability would be admitted to practice in the county courts would be a benefit to the good people of the province rather than a

grievance. None of those attorneys would have to fear anybody's displeasure for defending their clients as long as they refrained from making railing and seditious speeches against the government. And there was nothing in the order that would prevent the provincial or the county justices from suspending any attorneys who were insolent or who otherwise misbehaved. Seymour had always wanted the justices to do that: he had often said that he would be "very glad to see the County justices assert their Authority on all such occasions."<sup>194</sup>

The delegates still believed that Seymour's order was a grievance. They could not have "misrecited" the order, they responded the next day, because they had not recited it, and they did understand that anyone who had attended one of the Inns of Court or of Chancery would be able to practice in the province.

The claim that the justices in England had nothing to do with admitting attorneys, the delegates continued, was misleading. Although they admitted that they might not have been as well acquainted with the practice in Great Britain as Seymour and the members of the upper house were, they were

well satisfied [that] the Serjeants at Law . . . [were] called by the Queen's Writ and that the Attorneys . . . [were] never sworn or admitted by any Masters or Prothonotary of any Court without the Knowledge or Consent of the Justices of those Courts.

Although "in some Persons Opinion" the province was too young for the justices' admission of attorneys to have become a right through practice,<sup>195</sup> it appeared to the delegates that never in the history of the province had any attorney been admitted without the consent of the justices, who also had always been able to silence an attorney if the occasion required. The "contrary Practice . . . [was] an Aggrievance to the whole Province."

Knowing that Seymour's chief target was Thomas Macnemara, the delegates



were ready to bargain away his right to practice law in the province if Seymour would give up his claim to the right to license attorneys. They did not have to mention Macnemara's name for everyone to know whom they were thinking about when they asked Seymour and the members of the upper house "not to construe their Message as if they were Suitors for any particular Person" when they were in fact suitors "for the whole Province in General and for the Lives and Fortunes" not only of the present inhabitants of the province but also of their posterity.

Finally, the delegates asked the upper house to agree to the bill proposed for settling the issue.<sup>196</sup>

Seymour was not ready to give up, and the members of the upper house had to go along with him if they wanted to remain on the council and in the upper house. They recommended that to the bill for establishing attorneys' fees<sup>197</sup> a clause be added that a person would have to receive a license from the governor and his council before he could practice law in any court in the province. They pretended to meet the objections of the delegates by suggesting that the justices would still have the power to admit attorneys by swearing them and that they would also be able to suspend attorneys for just reasons.<sup>198</sup>

The delegates were smart enough to realize that the suggestion that swearing attorneys was the equivalent of admitting them was transparent nonsense, but in their response they revealed no resentment at the implication that they were foolish enough to be taken in. They responded only that they could not accept a clause requiring attorneys to be licensed,<sup>199</sup> and the upper house responded in turn that it could not accept the bill without that clause.<sup>200</sup>

If their offer to sacrifice Macnemara's legal career in the province would not get them their way, the delegates would try something else. Knowing that ultimately

they had the same interests as the members of the upper house, they reminded them that their only real enemy was John Seymour. They did not have to mention his name any more than they had had to mention Macnemara's earlier. They were very sorry, they told the members of "the Honble Council," that they "should hearken to the cunning, subtil Insinuations of any designing Persons and not look into the [English] Statutes empowering Courts to admit Attorneys." The two statutes that the delegates cited, "and many others," would "more truly inform" the members of the upper house that only the courts had the power to admit attorneys.<sup>201</sup>

They could not but take notice, the delegates concluded, how easily private bills passed but how when any were offered "for the Good of the Country in General some Persons . . . [threw] a stumbling Block in their Way."<sup>202</sup>

The next day — 15 December — Seymour decided to accept the delegates' hint of compromise, but if the members of the upper house wanted to remain in Seymour's good graces they could not allow the delegates' reflection on Seymour's character — and their own intelligence — to pass unprotested. After they had made so many concessions and had shown so much fair temper toward the delegates during this whole session,<sup>203</sup> they began, they had to express their concern that the delegates would have such a low opinion of them as to think they would "hearken to the cunning Subtile Insinuations of any designing Persons who Endeavour to throw Stumbling Blocks" in the way of the delegates in their effort to serve the country. They assured the delegates that they heartily considered such designing people as repellent<sup>204</sup> to the lower house as they were firmly resolved they were to themselves. It was their intention to imitate Seymour's noble example and use their "utmost Endeavours for the Service of . . . [their] Queen and Country without Artifice or design." If they were not convinced that admitting attorneys was still part of the

royal prerogative in the province they would not spend unprofitable minutes refusing what the delegates might reasonably challenge.<sup>205</sup>

Since they believed that the delegates were men of sound reason, they would end the dispute by pointing out that “it was the royal Prerogative to assign attorneys” in England, since there the prospective attorney had to get a grant from the king for his appointment.<sup>206</sup> Since that authority had never been delegated to the country, it must remain with the Crown.<sup>207</sup>

Such an assertion did not look promising, but it was only a final volley before the compromise. What ended the dispute was Seymour’s decision to take up the delegates’ hint of the day before and give up his claim to the right to license attorneys in return for the delegates’ writing Macnemara’s disbarment into law. He put the best light on it he could. In order to show how ready he was to satisfy the country that the delegates represented, the members of the upper house concluded, Seymour was willing to accept the bill on attorneys’ fees with the additional provisions that the courts of the province would have the power to admit and suspend attorneys until her Majesty’s pleasure was known but that they could not admit anyone whom Seymour and his council had already denied that liberty — Thomas Macnemara — and that nobody would be admitted as an attorney until he had qualified himself by taking the appropriate oaths.<sup>208</sup>

The delegates ordered that the bill establishing the fees of attorneys be amended accordingly,<sup>209</sup> and the bill did pass.<sup>210</sup>

The justices could continue to admit and suspend attorneys, and Macnemara’s disbarment was written into law.

By the time the assembly passed the act confirming Macnemara’s disbarment

he had been suspended from his practice in Maryland for thirteen-and-a-half months. He had gone to Philadelphia,<sup>211</sup> but he soon managed to get himself disbarred there, too.<sup>212</sup>

In 1718, as part of Governor John Hart's and the assembly's campaign to disbar Macnemara in Maryland completely and forever, the upper house sent three transcripts of Macnemara's experiences in Pennsylvania to the lower house. The first is a copy of the record of a "court of record" in Philadelphia, which on 5 April 1709 noted that Macnemara, who was under one recognizance to keep the peace and two recognizances for his good behavior, had appeared in court wearing a sword and had refused to lay it aside when the court required him to. Then he obstinately and contemptuously departed the court." The court ordered Edward Williams, one of the constables, to apprehend Macnemara, take his sword from him, and bring him before the court. How successful Williams was in that unenviable job does not appear.

The second transcript is the undated record of the request of the grand jury of the mayor's court in Philadelphia that Macnemara be disabled from practicing law not only in the mayor's court but also in all of Pennsylvania. The grand jurors noted that they had witnessed Macnemara's carriage and deportment and had "Sufficient Evidence of his Insolent behaviour at sundry other Times" in the city. That behavior tended to divide the queen's peaceable subjects and resulted in contempt for the authority of the government.

The grand jurors requested that in order to preserve the peace of the city and to maintain a good understanding among the inhabitants the mayor's court no longer permit Macnemara to appear as counsel or to plead as an attorney there. Because of Macnemara's "Insolent Behavior & Contempt," Governor Charles Gookin should also bar him from practicing law anyplace in Pennsylvania, as the grand jurors understood

the governor of Maryland had already done in that colony. Disabling Macnemara from practicing law in Pennsylvania would make the colony a more peaceable place to live. The grand jurors “Justly detested” nothing more than those insolent people who tried to disturb the peace and who would eventually commit greater evils.

The third transcript, from the court of common pleas for Philadelphia on 2 June 1709, is the record of that court’s prohibiting Macnemara from practicing in that court in the future because by his “Insolent Carriage and Behaviour” he had “Rendered himself . . . obnoxious to the Country in Generall.” Both the grand jury and the general assembly had complained of his conduct.<sup>213</sup>

A fourth document from Pennsylvania Hart and the members of the assembly apparently did not see. Never hesitating to attack the tiger in its den, Macnemara had challenged the Quakers’ privilege of making affirmation rather than swearing oaths, and the Quakers had to protest.

Making it sound as though they were more concerned about the queen’s prerogatives than about their own rights, the eighty people who signed the “Remonstrance of the freeholders & Inhabitants” of Philadelphia to the house of representatives on 7 May 1709 complained that in the supreme court in Philadelphia on 11 April 1709 Macnemara, designing to vilify the queen’s most gracious order of 21 January 1702/3 that the Quakers’ affirmation “might be in Lieu of and of the same Validity with the Oath Enjoyed by Law to others,” to bring the queen’s royal power and prerogative into contempt, and to deprive the peaceable and loyal subjects of Pennsylvania of the benefit of that order and to render it useless, openly and publicly declared that “it was inconsistent with the Queen to Grant such an Order” and that the order was against the law. According to the petitioners he also used other expressions denigrating that most gracious order.

The petitioners asked the house of representatives to forward their petition to Governor Gookin with the request that he bar Macnemara from the practice of law in Pennsylvania for this offense and for other “Insolency’s Contempts and abuses” that he had “openly and Scandalously Committed in the City Sessions, in the face of the Court and Countrey.” These additional insolencies, contempts, and abuses, the petitioners claimed, were fully demonstrated by an address of the grand jury of the city sessions.<sup>214</sup>

The house of representatives did forward the petition to Gookin and his council, who on 6 June referred it to further consideration.<sup>215</sup> It appears that they did nothing further with it, possibly because Macnemara had already been disbarred in Pennsylvania.<sup>216</sup>

Deprived of his practice in Pennsylvania, Macnemara returned to Maryland, where he was soon in trouble again. On a date that the record does not include, Cornelius White as his attorney sued out a writ of *certiorari* to remove all indictments and other proceedings against him from the assizes for Anne Arundel County to the provincial court for July of 1709, but the *certiorari* was not returned to that court.<sup>217</sup> Since there are no other records in the case it is impossible to know what Macnemara was supposed to have done this time that led to an accusation but no prosecution.

On 30 July 1709 Governor John Seymour died in office,<sup>218</sup> and Macnemara, obviously hoping that he would have better luck with Edward Lloyd as president of the council of Maryland<sup>219</sup> than he had had with Seymour as governor, applied to the upper house to be restored to the practice of law. On 27 October 1709 the upper house referred his petition to the lower house,<sup>220</sup> where the next day the delegates recommended that the Committee of Laws inspect the act by which the assembly had

ratified Seymour's suspension of Macnemara and report its conclusions to the House.<sup>221</sup>

Freed from the bullying Seymour, the members of the assembly passed a law by which they repudiated his grab for power by repealing Macnemara's suspension from the practice of law.<sup>222</sup> The embattled attorney did not waste any time. On the day on which Edward Lloyd signed and sealed of the repealing act — 11 November 1709<sup>223</sup> — he took the oaths of an attorney before William Holland, chief justice of the provincial court.<sup>224</sup> He was sworn again as an attorney in the Anne Arundel County court during that same month<sup>225</sup> and in the Baltimore County court in March of 1709/10,<sup>226</sup> apparently for the first time.<sup>227</sup> When at the provincial court for April of 1710 he presented a certificate proving that he had taken the oaths and that Holland had admitted him as an attorney there the justices ruled that he would “Remaine” an attorney in that court.<sup>228</sup>

The quarrel between the delegates and the members of the upper house over Seymour's licensing of attorneys, like many of their other quarrels, seems more like a sham battle than a real one. The real enemy was the governor. The interests of the others were pretty much the same.<sup>229</sup> By the early years of the eighteenth century both the delegates and the members of the upper house either were or wanted to be members of the emerging ruling class of the province,<sup>230</sup> and their interests conflicted with those of the Crown and its representatives far more than they did with each other.

The members of the upper house must have been no more enthusiastic about giving the governor and themselves as members of the council the power to license attorneys than the delegates were. While under Seymour's proposal they themselves as members of the council would be involved in that licensing, any power that that

might appear to have given them would have been only a shadow. They might have had some slight influence, but the influence would have been only what the governor would tolerate. Anyone who became too insistent or who protested too much would find his days on the council numbered, just as he would have if he had not supported Seymour in his grasp for power in the first place. The governor's and his council's licensing attorneys would have given the governor, and thus the Crown, an enormously expanded power at the expense of the emerging ruling class of which the members of the council would expect to be the leaders.

Not only did the members of the upper house have to support the governor, but they also had to acquiesce in the flattering description of him in their message to the delegates on the fifteenth.<sup>231</sup> Where the laudatory language originated is anybody's guess,<sup>232</sup> but the members of the upper house had to accept it whether they liked it or not.

The assembly repealed Macnemara's disbarment as soon as it had a chance,<sup>233</sup> and though the Crown disallowed that act along with all of the others passed during that session because of their improper style<sup>234</sup> Macnemara continued to practice.<sup>235</sup> The act nevertheless illustrates that the members of the upper house as well as the delegates feared Macnemara a lot less than they feared the expansion of the prerogative.

Readmitted to the practice of law, Macnemara was soon assaulted again. At the Anne Arundel County court for March of 1709/10 the justices on Macnemara's complaint ordered that a summons issue for Edward Carroll to answer such things as would be objected against him on behalf of the queen. The sheriff, John Gresham Jr.<sup>236</sup> or an undersheriff immediately returned the *capias ad respondendum* against



Carroll endorsed "*Cepi*," which means he had served the writ.<sup>237</sup> At that same court the grand jury presented Carroll for assaulting Macnemara; Carroll confessed and submitted to the judgment of the court; and the justices fined him ten shillings.<sup>238</sup>

Whatever satisfaction Macnemara might have received from Carroll's fine and his own restoration to the practice of law, his problems were about to get worse. In May of 1710 he and John Mitchell killed Thomas Graham, a merchant from Philadelphia, and, after they were convicted at the provincial court for July of 1710 of chance-medley — which in Macnemara's case the provincial justices illegally raised to manslaughter so that if they could not hang him they could at least brand him on the hand —, the council once again withdrew his right to practice law in the province.<sup>239</sup>

From that time until his death in 1719, Macnemara was never free from the harassment of his enemies in power.

### *Chapter 3*

#### *Early Troubles, 1703-1710*

<sup>1</sup> See Chapter 9, “Harassment by Indictment, 1712-1719”; Chapter 11, “Disbarred Again, 1718”; Chapter 13, “Disbarred Once More, 1719.”

<sup>2</sup> Middleneck Parish, which was the same as St. Anne’s Parish, included Annapolis. It was the area between South River and Severn River and extended to the northwest. Nelson Waite Rightmyer, *Maryland’s Established Church* (Baltimore: The Church Historical Society, 1956), pp. 138-139; Nancy T. Baker, “Annapolis, Maryland, 1695-1730,” *Maryland Historical Magazine*, LXXXI, No. 3 (Fall 1986), p. 192. Baker has a diagram of the parishes of Anne Arundel County.

<sup>3</sup> For the conventional wording of the indictment for assault, see C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), pp. 284-285; Anne Arundel County Court Judgment Record, Liber T. B., No. 3, pp. 437-439; *ibid.*, 1720-1721, pp. 194-196, 201-203; Liber I. B., No. 1, pp. 21-22, 414, 482-483, 483-484; Provincial Court Judgment Record, Liber W. G., No. 1, pp. 136-137, 141-142, 531, 542-543, 543.

The conventional wording of the indictment for assault must often make the assault, even when it did occur, sound a lot more serious than it actually was. Surely not every victim of an assault was beaten so badly “that of his life it was dispaired.”

<sup>4</sup> For Thomas Macnemara and William Bladen as enemies, see Chapter 9,

“Harassment by Indictment, 1712-1719.”

<sup>5</sup> Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), pp. 133-134.

<sup>6</sup> For Bladen as a defense attorney, see C. Ashley Ellefson, *William Bladen of Annapolis, 1673?-1718: "the most capable in all Respects" or "Blockhead Booby?"*, Appendix to Chapter 6, “William Bladen as Defense Attorney,” on Archives of Maryland Online, at <http://aomol.net/000001/000747/html/index.html>.

<sup>7</sup> John Gresham became sheriff of Anne Arundel County on 4 May 1703 and was still sheriff on 10 April 1705. *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXV, 150, 188. The records of the Anne Arundel County court for March of 1703/4 and June of 1704 do not list the name of the sheriff at the beginning of the records. Anne Arundel County Court Judgment Record, Liber G, pp. 320, 414.

<sup>8</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 266, 268-270. It is possible, of course, that Macnemara *had* bitten off Matthew Beard's right ear and that the petit jurors acquitted him because Beard had attacked him first and therefore the jurors did not consider Macnemara culpable.

<sup>9</sup> Index to Provincial Court Judgment Record and Name Index to Anne Arundel County Court Judgment Record, Box BAR-BLA, both at Maryland State Archives.

<sup>10</sup> Council of Maryland to Board of Trade, 18 July 1712, The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127 (photocopy in Library of Congress).

<sup>11</sup> *Md. Arch.*, XXV, 140 (water marshall); *ibid.*, XXIV, 316 (armorers). For Matthew Beard as marshal see also *ibid.*, XXV, 146-147, 147, 149.

<sup>12</sup> First charter of Annapolis, in Chancery Record 2, p. 591; Petition of Corporation and Inhabitants of Annapolis, 18 November 1708, *ibid.*, pp. 595-596.

<sup>13</sup> In Prince George's County in 1699 Matthew MacKeboy when he was drunk bit Isaac Williams' ear (Joseph H. Smith and Philip A. Crowl, eds., *Court Records of Prince Georges County, Maryland, 1696-1699* (Liber A), (Washington: The American Historical Association, 1964), pp. 457, 458, 465-466; Prince George's County Court Record, Liber A, pp. 401, 406); was accused of biting John Haryson's ear (Smith and Crowl, eds., *Court Records of Prince Georges County, Maryland, 1696-1699* (Liber A), pp. 458, 498; Prince George's County Court Record, Liber A, pp. 401, 430); and did bite off a piece of Thomas Orton's left ear. Smith and Crowl, eds., *Court Records of Prince Georges County, Maryland, 1696-1699* (Liber A), pp. liii, 458, 460, 481-482; Prince George's County Court Record, Liber A, pp. 402, 403, 417; Provincial Court Judgment Record, Liber W. T., No. 3, pp. 12-13. And in 1715 John Kennan bit off Gerard Slye's right ear. Provincial Court Judgment Record, Liber V. D., No. 2, pp. 349-350.

<sup>14</sup> Provincial Court Judgment Record, Liber V. D., No. 1, pp. 360, 732-736; Chapter 9, "Harassment by Indictment, 1712-1719'," at Notes 21-26.

<sup>15</sup> Provincial Court Judgment Record, Liber V. D., No. 1, pp. 486, 515, 518; Liber V. D., No. 2, pp. 1, 4-6; Chapter 9, "Harassment by Indictment, 1712-1719," at Notes 35-51.

<sup>16</sup> There might have been a couple of brawls at the Navarre's inn in Annapolis. In addition to Macnemara's indictment for assaulting Mary Navarre, Horsley was indicted for assaulting Mary Navarre on the same day; John and Mary Navarre for assaulting Horsley on 22 October 1714; John Navarre for assaulting Richard Rotherfoot on the same day; and Macnemara for assaulting John Navarre on a date that the

record does not specify. Anne Arundel County Court Judgment Record, Liber T. B., No. 3, pp. 402, 437-439, 439-440; Provincial Court Judgment Record, Liber V. D., No. 1, pp. 486, 515, 515-516, 516, 518, 581, 582, Liber V. D., No. 2, pp. 1, 4-6, 6-7, 46-50, 50-56; Chapter 9, "Harassment by Indictment, 1712-1719," at Notes 35-51.

<sup>17</sup> Anne Arundel County Court Judgment Record, Liber G, p. 493.

<sup>18</sup> *Ibid.*, p. 612.

<sup>19</sup> *Ibid.*, p. 647.

<sup>20</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 555, 559. The record does not say to which sheriff the justices committed Roper, but probably it was the sheriff of Anne Arundel County, either John Gresham or Josiah Wilson. See Chapter 2, "Competence," Note 30.

The provincial court opened on 24 April 1705 (Provincial Court Judgment Record, Liber T. L., No. 3, p. 553), five days after Roper assaulted Macnemara.

<sup>21</sup> *Ibid.*, p. 566b.

<sup>22</sup> *Ibid.*, Liber T. B., No. 2, p. 75.

<sup>23</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 148, 150; Chapter 1, "Character," at Notes 76-77.

<sup>24</sup> Prince George's County Court Record, Liber C, p. 57. Harsh language and even cursing among attorneys in court appears not to have been unusual in Maryland around the turn of the eighteenth century. At the Prince George's County court for September of 1696 the justices fined William Stone two shillings for cursing in open court, and in October of 1699 the justices fined Stone and Joshua Cecil one hundred pounds of tobacco each "for their foule pleadeing" but remitted the fines "upon their submission." Smith and Crowl, eds., *Court Records of Prince Georges County, Maryland, 1696-1699* (Liber A), pp. 42, 560; Prince George's County Court Record,

Liber A, pp. 43, 474.

<sup>25</sup> Provincial Court Judgment Record, Liber P. L., No. 1, p. 213. Whether Macnemara had to provide any sureties does not appear.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, p. 237.

<sup>28</sup> *Ibid.*, Liber P. L., No. 2, p. 24.

<sup>29</sup> For Macnemara's disbarment and his moving between Maryland and Pennsylvania, see later in this chapter at Notes 44-52, 211-216.

<sup>30</sup> *Md. Arch.*, XXXIII, 503, 532, 620, 621. On 12 April 1720 the upper house referred to William FitzRedmond as one of the "Eminent Papists" of the province. *Ibid.*, pp. 503, 620.

<sup>31</sup> According to John Hart in his speech to the assembly on 6 April 1720, either William FitzRedmond or Edward Coyle was Charles Carroll's nephew, but in the speech Hart does not name the two men and therefore does not say which one he means. *Md. Arch.*, XXXIII, 481. For the names of William FitzRedmond and Edward Coyle, see *ibid.*, XXX, 372-374, 409-410, 516-517.

In his will, however, Carroll calls William FitzRedmond his beloved kinsman. Anne Arundel County Wills, Liber 16, p. 176; Hester Dorsey Richardson, *Side-Lights on Maryland History, with Sketches of Early Maryland Families* (2 vols.; Baltimore: Williams and Wilkins Company, 1913), II, 269.

Aubrey C. Land identifies William FitzRedmond as Charles Carroll's nephew, but he provides no documentation for the information. Aubrey C. Land, *The Dulanys of Maryland: A Biographical Study of Daniel Dulany, the Elder (1685-1753) and Daniel Dulany, the Younger (1722-1797)* (Baltimore: Maryland Historical Society, 1955; reprinted Baltimore: The Johns Hopkins Press, 1968), p. 30.

Ronald Hoffman refers to William FitzRedmond only as Charles Carroll's kinsman, but again with no source. Ronald Hoffman, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500-1782* (Chapel Hill: University of North Carolina Press, 2000), p. 84.

<sup>32</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 647, 695-697. The prosecutor who brought the case against William FitzRedmond was Macnemara's past and future nemesis, William Bladen. Bladen's name does not appear after FitzRedmond's indictment in the record of either the Anne Arundel County court or the provincial court (Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 695-697; Provincial Court Judgment Record, Liber P. L., No. 2, pp. 242-245), but since Bladen was the attorney general he would have been serving as the clerk of indictments of Anne Arundel County. His name does appear at the end of an indictment that the grand jury returned at the Anne Arundel County court for March of 1706/7 and that is recorded in the records of the June court. Here Bladen is identified as attorney general. Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 495, 535-536.

<sup>33</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 646, 686.

<sup>34</sup> *Ibid.*, p. 648.

<sup>35</sup> *Ibid.*, p. 673.

<sup>36</sup> *Ibid.*, pp. 695-697. The witnesses to the indictment against William FitzRedmond were John Noades, Thomas Bordley, John Beale, Edmond Benson, and Joseph Hill.

<sup>37</sup> The assize courts were circuit courts conducted by justices of the provincial court who went from county to county to hear cases so that suitors would save the

time and expense of going to Annapolis for the sessions of the provincial court but also, it appears clear, to increase the power of the provincial justices at the expense of the county justices.

There were two circuits. The Western Circuit — for the Western Shore — included Anne Arundel, Baltimore, Calvert, Charles, Frederick, Prince George's, and St. Mary's counties, and the Eastern Circuit — for the Eastern Shore — included Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, and Worcester counties. Frederick and Worcester counties were established after our period, in 1748 and 1742 respectively.

For the battle over the establishing of the assizes, see Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 73-114.

<sup>38</sup> Provincial Court Judgment Record, Liber P. L., No. 2, p. 122.

<sup>39</sup> The provincial justices who took the assizes for the Western Shore in the spring of 1708, the very first circuit of the assizes, were William Holland and Kenelm Cheseldyne. Provincial Court Judgment Record, Liber P. L., No. 2, pp. 158-160, 162-164, 165-168, 170-172, 190-194, 194-197, 201-202, 202-205.

<sup>40</sup> Provincial Court Judgment Record, Liber P. L., No. 2, pp. 242-245. What was wrong with the indictment against FitzRedmond does not appear.

<sup>41</sup> There is no entry of another indictment for William FitzRedmond's alleged libel of Thomas Macnemara in the Name Index to the Anne Arundel County Court Judgment Record, Box EDW-FRA, and there was no grand jury at the provincial court for September or November of 1708. Provincial Court Judgment Record, Liber P. L., No. 2, pp. 252ff., 354ff. It is possible, of course, that FitzRedmond was prosecuted for the libel at the assizes and that no record of the prosecution remains.

FitzRedmond was one of the defendants whom according to the assembly Mac-



nemara defended when he was tried at the special court of oyer and terminer in Annapolis on 10 July 1716 for “drinking the Pretender’s Health & Speaking contemptibly of the King” on 10 June 1716, the Pretender’s birth-night. *Md. Arch.*, XXX, 372-374, 409-410, 516-517; 1718, c. 16, *Md. Arch.*, XXXVI, 525-527; 1719, c. 17, *Md. Arch.*, XXXVI, 528-530; Chapter 9, “Harassment by Indictment, 1712-1719, at Notes 53-54; Chapter 11, “Disbarred Again, 1718,” at Notes 68-70; Chapter 13, “Disbarred Once More, 1719,” at Note 16.

The Pretender was James Edward, the Old Pretender, the son of James II. Sir George Clark, *The Later Stuarts, 1660-1714* (2nd edition; Oxford: The Clarendon Press, 1955), pp. 240-243 and Genealogical Table.

Macnemara also became surety in twenty pounds sterling to guarantee William FitzRedmond’s appearance at the Anne Arundel County court for August of 1716. When FitzRedmond appeared the justices discharged him from the recognizance. The record does not state what FitzRedmond was supposed to have done, but only that he had to appear “to answer what should be objected against him on his Lordships behalfe and in the Meantime to Keep the peace.” Anne Arundel County Court Judgment Record, Liber V. D., No. 1, p. 397.

Possibly the bond was the result of FitzRedmond’s conviction at the special court of oyer and terminer on 10 July 1716. See this Note above.

<sup>42</sup> Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), p. 515. The source does not mention how many houses Macnemara bought in 1710 and 1715, but the implication is that he bought one house each year.

<sup>43</sup> Owings, *His Lordship’s Patronage*, pp. 120, 124.

<sup>44</sup> For the battle over Margaret Macnemara’s separate maintenance, see Chapter

## 4, "Not-So-Loving Spouses, 1707-1708."

<sup>45</sup> *Md. Arch.*, XXV, 223-224. Seymour's proclamation on attorneys is written out in the records of the council here as well as in the records of the provincial court that opened on 30 September 1707, the same day on which he issued the proclamation. Provincial Court Judgment Record, Liber P. L., No. 1, pp. 234-235.

<sup>46</sup> John E. Douglass agrees: "That [the] exclusion of Macnemara from practicing was the purpose of the proclamation was made abundantly clear following its promulgation." John E. Douglass, "Between Pettifoggers and Professionals: Pleaders and Practitioners and the Beginnings of the Legal Profession in Colonial Maryland, 1634-1731," *The American Journal of Legal History*, XXXIX, No. 3 (July 1995), p. 376.

What followed was the readmission of every attorney who applied except Macnemara. I discuss this immediately below.

<sup>47</sup> *Md. Arch.*, XXV, 226; Provincial Court Judgment Record, Liber P. L., No. 1, p. 235. Richard Dallam also had practices in Anne Arundel County and Prince George's County (Day, *A Social Study of Lawyers in Maryland, 1660-1775*, p. 295), but only Calvert County is mentioned in the entry in the published *Archives*. Dallam was clerk of indictments in Calvert County. *Ibid.*

<sup>48</sup> Provincial Court Judgment Record, Liber P. L., No. 1, p. 235. The readmission to practice of William Bladen, Wornell Hunt, Robert Goldsborough, Richard Dallam, George Plater, and Cornelius White, as well as Joshua Cecil, is noted in the records of the of the provincial court that opened on 30 September 1707. *Ibid.*, pp. 235, 265.

<sup>49</sup> *Md. Arch.*, XXV, 236, 237.

<sup>50</sup> The members of the council in attendance on 30 September 1707, when it

heard Macnemara's petition, were Thomas Tench, John Hammond, Edward Lloyd, William Holland, Thomas Ennalls, and William Coursey. Obviously Seymour was also present. *Md. Arch.*, XXV, 223.

Three of the six men present on 30 September 1707 — Edward Lloyd, William Holland, and Thomas Ennalls — would sign the council's accusatory and dishonest letter to the Board of Trade against Macnemara on 18 July 1712. TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXVII, No. 16.

<sup>51</sup> *Md. Arch.* XXV, 226-227. Clayton Coleman Hall's description of Macnemara's disbarment on 30 September 1707 leaves the impression that all of the fault was Macnemara's. Here appears to be an instance in which the historian can get all of the readily accessible "facts" right but still be misleading because he does not include information that is not readily apparent.

Hall says, for example, that Macnemara "was long a disturbing element in the Province." Clayton Coleman Hall, "Preface" to *Md. Arch.*, XXXIII, xi. Of course he was, but those words without explanation leave no hint that possibly the disturbance of the ruling class was not all bad.

Describing the actual disbarment, Hall says that

on account of the corruption, ignorance and extortion of certain attorneys, all who were not members of some of the Inns of Court in England, should appear before the Council for examination as to their fitness. MacNemara [*sic*] immediately petitioned for examination, stating that for three years he had been practising in the Courts but by this proclamation he was deprived of his practice and livelihood. His petition was rejected by the Council on account of his "many misdemeanors" and having often affronted the Courts and abused his clients. He was told that it would be time enough to apply for

examination when he had given some evidence of reformation in character.

*Ibid.*, p. xii.

Nothing here about the possibility that there might have been more to the issue than can be found in the record of the council, where Hall gets his information but which he does not cite.

For Aubrey C. Land's very confused treatment of Macnemara's disbarment on 30 September 1707, see Land, *The Dulanys of Maryland*, pp. 7-8, 14-16, 28, 34.

<sup>52</sup> TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIII, Nos. 600 and attachments, 618, 619, 623. Earlier Francis Nicholson had claimed the right to suspend attorneys. *Md. Arch.*, XXII, 27-28, 87, 88-89, 89, 92-94, 106-107; XXIII, 253-254.

<sup>53</sup> William Stevens Perry, *Historical Collections Relating to the American Colonial Church* (5 vols.; Hartford, Conn.: The Church Press, 1870-1878; reprinted New York: AMS Press, Inc., 1969), IV, 62.

<sup>54</sup> *Md. Arch.*, XXVI, 97, 389, 475, 561; XXVII, 61; Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 441.

<sup>55</sup> *Md. Arch.*, XXV, 240; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIII, No. 1570; TNA (PRO), Colonial Office 5, Vol. 727, p. 89 (photocopy in Library of Congress).

<sup>56</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 90-91; Liber P. L., No. 2, pp. 233-236.

<sup>57</sup> For the date of the opening of the court, see *ibid.*, Liber P. L., No. 1, p. 233.

At the provincial court for September of 1707 both Sylvester Welsh and Richard Snowden pleaded guilty of misprision of treason for receiving, aiding, comforting, entertaining, and concealing Richard Clarke, Welsh on 26 December 1706 and Snowden on 4 April 1707, and received pardons with fines of thirty pounds sterling. The court assigned George Plater and Cornelius White as counsel for Welsh, and Snowden did not have counsel. Provincial Court Judgment Record, Liber P. L., No. 1, pp. 236, 244-245, 245-247.

Also at the provincial court for September of 1707 Sylvester Welsh was acquitted of uttering counterfeit money. Either the clerk made a mistake or else Welsh was tried even though the grand jury returned the bill of indictment against him *ignoramus*. According to the record it was endorsed "Ignoramus H Wriothesley foreman." *Ibid.*, Liber P. L., No. 1, pp. 243-244. Probably the clerk made a mistake, since at the provincial court for May of 1707 the grand jury with Henry Wriothesley sitting as foreman did indict Welsh for an unnamed crime. *Ibid.*, pp. 90-91.

In this case Welsh did not have an attorney.

Some of the proceedings against the alleged accomplices of Richard Clarke appear to have been carried out at the assizes for Anne Arundel County (see for example Provincial Court Judgment Record, Liber P. L., No. 2, p. 24), and the records of those proceedings have not survived.

<sup>58</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 274-275.

<sup>59</sup> Since the two indictments for the forgery or counterfeiting were never tried, they are not written out in the record and therefore no details of them are available.

<sup>60</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 266, 268.

<sup>61</sup> *Ibid.*, p. 429; *Md. Arch.*, XXVI, 379.

<sup>62</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 553ff.

<sup>63</sup> 1705, c. 5, *Md. Arch.*, XXVI, 513-514.

<sup>64</sup> *Md. Arch.*, XXVII, 102.

<sup>65</sup> *Ibid.*, pp. 42, 106.

<sup>66</sup> *Ibid.*, p. 108; 1707, c. 1, *Md. Arch.*, XXVII, 139-140.

<sup>67</sup> *Md. Arch.*, XXVII, 42-43.

<sup>68</sup> *Ibid.*, p. 41.

<sup>69</sup> *Ibid.*, pp. 33-37, 111, 114-118.

<sup>70</sup> *Ibid.*, p. 118. Shortly before the delegates expelled Hill on that afternoon of 11 April 1707 both houses passed the engrossed "Supplementary Act to the Act for advancement of Trade and Erecting Ports and Towns." *Md. Arch.*, XXVII, 50, 113, 114. This act supplemented 1706, c. 14, *Md. Arch.*, XXVI, 636-645, in which Hill was named as one of the sixteen commissioners for laying out the towns mentioned for Anne Arundel County. When on the fifteenth Seymour signed the supplementary bill along with the others passed during that session Hill was still included as one of the commissioners for laying out the towns. *Md. Arch.*, XXVII, 57-58, 128, 129; 1707, c. 16, *Md. Arch.*, XXVII, 161.

<sup>71</sup> The provincial court met on 13 May 1707. Provincial Court Judgment Record, Liber P. L., No. 1, p. 89.

<sup>72</sup> *Ibid.*, p. 224. Who Hill's sureties were is not noted in this entry. For Josiah Wilson as sheriff of Anne Arundel County, see *ibid.*, p. 89; Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 490, 532.

<sup>73</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 90-91. Since the justices discharged Hill's bond and "afterwards" committed him to Josiah Wilson's custody, it appears that the justices discharged the bond immediately on his appearance and committed him to Wilson's custody only after the grand jury indicted him.

<sup>74</sup> At the provincial court for September of 1707 the grand jury returned *ignoramus* a bill of indictment against Daniel Wells, but since only the note of the return appears we do not know what Wells was alleged to have done. Provincial Court Judgment Record, Liber P. L., No. 1, p. 240.

<sup>75</sup> I have found no effort to prosecute Thomas Brereton or John Spry.

<sup>76</sup> The witnesses to the indictment were John Spry, Thomas Brereton, and William Bladen. Provincial Court Judgment Record, Liber P. L., No. 2, pp. 233-235. Bladen, of course, was attorney general.

<sup>77</sup> While the wording of the record is not entirely clear, it makes it appear that Hill asked the justices specifically to assign Macnemara as his attorney.

. . . Thomas Macnemara assigned by the Court on the said Prisoners Prayer to be of Council for him in order to Make his full Defence . . . .

*Ibid.*, p. 235.

<sup>78</sup> The act of 7 William III (1695) provided that the defendant in any case of treason or misprision of treason had to have a copy of the indictment, but not the names of the witnesses, at least five days before his trial and a copy of the panel of petit jurors at least two days before his trial and required the justices to assign counsel to him if he requested it. It also provided that the defendant be allowed process to require his witnesses to appear. Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4 vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), III, 125-126; 7 William III, c. 3, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), IX, 389-392.

<sup>79</sup> After the petit jurors heard the evidence they were “to be kept without meat, drink, fire, or candle, unless by permission of the judge, till they are all unanimously

agreed.” Blackstone, *Commentaries*, III, 375. See also *ibid.*, IV, 360.

According to Bladen, the jurors in Hill’s case

that were Impannelled and sworne to Try the same being sent out to Consider of their verdict were Lett goe at Large by their bayliff upon the Adjournment of the Court before the Court Mett Againe, and before they Gave in their verdict to the Court . . . .

Provincial Court Judgment Record, Liber P. L., No. 1, p. 219.

<sup>80</sup> *Ibid.*, pp. 219-220, 238.

<sup>81</sup> TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIII, No. 975, (p. 469); *Md. Arch.*, XXV, 263. The transcription in the *Archives* makes it appear that Seymour doubted Hill’s guilt — “notwithstanding which I am doubtfull” —, but it is more likely that the *Calendar of State Papers* has it right in having Seymour doubt that juries in Maryland would ever do “common justice on the countrie-borne.” No doubt Hill’s acquittal would strengthen Seymour’s doubt. It was, after all, Seymour and his council who ordered Hill’s arrest and were convinced of his guilt. *Md. Arch.*, XXVII, 41, 42-43, 45-47, 51-52.

<sup>82</sup> Provincial Court Judgment Record, Liber P. L., No. 1, p. 238.

<sup>83</sup> *Ibid.*, Liber P. L., No. 2, p. 24.

<sup>84</sup> The record of the provincial court always includes the date of the first day of a session, and writs sued out between sessions of the court were dated the last day of the earlier court. Thus we can discover the last day of any session by finding the appropriate writs. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 503-507.

Writs sued out after the session of the provincial court that opened on 1 April 1708 ended but before the next session opened on 6 July 1708 (Provincial Court Judgment Record, Liber P. L., No. 2, p. 129) are dated 8 April 1708. *Ibid.*, pp. 215-



216, 216-217, 217-218, 231-232, 245-246, 282, 283-284.

<sup>85</sup> *Ibid.*, Liber T. L., No. 1, pp. 566, 576-577.

<sup>86</sup> Anne Arundel County Court Judgment Record, Liber G, pp. 252, 284-285. Maintenance is “An officious intermeddling in a lawsuit by a non-party by maintaining, supporting or assisting either party, with money or otherwise, to prosecute or defend the litigation.” Henry Campbell Black, *Black’s Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 954.

English laws against maintenance were 1 Edward III, c. 14, in Pickering, *The Statutes at Large*, I, 418-419 (1327); 20 Edward III, c. 4, in *ibid.*, II, 23-24 (1346); and 1 Richard II, c. 4, in *ibid.*, pp. 205-206 (1377).

<sup>87</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 266, 274-275.

<sup>88</sup> *Md. Arch.*, XXV, 226, 240; Provincial Court Judgment Record, Liber P. L., No. 2, pp. 23, 129, 252.

<sup>89</sup> *Md. Arch.*, XXV, 236, 238, 240; John Seymour to Council of Trade and Plantations, 23 June 1708, TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIII, No. 1570; TNA (PRO), Colonial Office 5, Vol. 727, p. 89; John Seymour to Principal Secretary of State, 23 June 1708, in “Unpublished Provincial Records,” *Maryland Historical Magazine*, XVI, No. 4 (December 1921), pp. 357-358.

The members of the council who were present on 3 April 1708, when Seymour and his council decided to hang Clarke on the bill of attainder, were William Holland, Thomas Ennalls, and Samuel Young. The two provincial justices, besides William Holland, were Thomas Smith and Philemon Lloyd. *Md. Arch.*, XXV, 240.

<sup>90</sup> Provincial Court Judgment Record, Liber P. L., No. 2, pp. 233-236. This was not the first time that Joseph Hill had been in trouble. Back in May of 1701,

when he had been summoned to appear “to answer some matters depending against him” he “scurilously [*sic*] abused” the officer sent to summon him and refused to appear. The provincial justices ordered that the sheriff, apparently of Anne Arundel County, immediately bring him into court to answer for his contempt. When the sheriff brought him into court the justices asked him whether he “had anything to say why he ought not to be find [*sic*] for his Contempt,” and when he remained obstinate they “Examine[d] further into his Contempt” and found it to be “a Contempt of a high nature.” With that they fined him five pounds sterling. *Ibid.*, Liber W. T., No. 3, pp. 628-629.

<sup>91</sup> *Md. Arch.*, XXVII, 118ff.

<sup>92</sup> *Ibid.*, pp. 200, 267, 410, 517; XXIX, 33, 127, 259, 391, 467; XXX, 95, 360, 477; XXXIII, 53, 201, 365, 565; XXXIV, 61, 199, 401, 656; XXXV, 91; *Biographical Dictionary*, I, 37-44, 441. The only session Joseph Hill missed from September of 1708 through October of 1723 was the short session of 20-28 February 1721/2. *Md. Arch.*, XXXIV, 307-331.

<sup>93</sup> In their letter to the Board of Trade on 18 July 1712 the members of the council make it appear that only Macnemara was disbarred on this occasion. TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127. Three of the members of the council who signed the letter to the Board of Trade — Edward Lloyd, William Holland, and Thomas Ennalls — also sat on the council on 30 September 1707, the day on which Macnemara was disbarred. *Md. Arch.*, XXV, 223.

<sup>94</sup> In the records of the Anne Arundel County court for November of 1707 the notation of Macnemara’s disbarment immediately follows the note of the admissions of William Bladen, Wornell Hunt, and Richard Dallam to practice there. Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 646.

I have not checked the other county courts for the admission of attorneys.

<sup>95</sup> Suing “in proper person” means only that the party was acting as his own attorney. *Black’s Law Dictionary* (6th edition), p. 792.

<sup>96</sup> The declaration is “the first of the pleadings on the part of the plaintiff in an action at law. . . .” *Black’s Law Dictionary* (6th edition), p. 407.

<sup>97</sup> The plea was “the first pleading on the part of the defendant. In the strictest sense, the answer which the defendant in an action at law made to the plaintiff’s declaration. . . .” *Ibid.*, p. 1151.

<sup>98</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 646. Alan F. Day says that at their court for November of 1707 the justices of Anne Arundel County suspended Thomas Macnemara from his practice. Day, *A Social Study of Lawyers in Maryland, 1660-1775*, p. 513. Governor John Seymour, however, had already suspended Macnemara, and here the justices were simply noting that suspension and making provision for those of Macnemara’s clients who found themselves without lawyers.

<sup>99</sup> Chancery Record 2, pp. 484-485; Chapter 4, “Not-So-Loving Spouses, 1707-1708.

<sup>100</sup> The four members of the council who met with John Seymour on 17 February 1707/8 were Thomas Tench, Francis Jenkins, William Holland, and William Coursey. *Md. Arch.*, XXV, 234.

<sup>101</sup> On 13 October 1707, two weeks after Macnemara was suspended from the practice of law in the province, John Seymour, John Hamond, and Thomas Tench sitting in chancery ordered that Peter Perry’s case against Roger Woolford be dismissed unless Perry filed his complaint against Woolford by the “last” of November. Chancery Record 2, p. 586.

The record here notes that Perry was suing “in forma paup.”

<sup>102</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 672, 686.

<sup>103</sup> Lawyers pleading for paupers were paid out of the county levy or the public levy. Provincial Court Judgment Record, Liber T. L., No. 3, pp. 333-334; Blackstone, *Commentaries*, III, 400.

<sup>104</sup> While by telling Josiah Wilson that he would not answer Seymour and his council “untill he knew whether it was a Crime” and that “what he had gott none should take from him” Macnemara might appear to have implicitly admitted that he had taken the illegal fee, that response could have been mere bluster, especially since he was never prosecuted for any such offense.

<sup>105</sup> *Md. Arch.*, XXV, 234-235.

<sup>106</sup> In none of the records of the council, the assembly, the provincial court, and the county courts of colonial Maryland that I have been through have I found any other instance of a person’s being placed in the stocks “bare-breeched.”

<sup>107</sup> Chancery Record 2, pp. 484-485; Chapter 4, “Not-So-Loving Spouses, 1707-1708,” at Notes 42-44.

<sup>108</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 688. At the same time the justices fined Wornell Hunt one hundred pounds of tobacco for his misbehavior in court. *Ibid.*

<sup>109</sup> I deal with Macnemara’s experiences in Pennsylvania later in this chapter at Notes 211-216.

<sup>110</sup> *Md. Arch.*, XIX, 291-292, 341.

<sup>111</sup> *Ibid.*, pp. 303, 342. What I say about the charters here closely follows a more thorough treatment, *Governor John Seymour and the Charters of Annapolis* —

1708, Volume 749 of the Archives of Maryland Online, at <http://www.aomol.net/000001/000749/html/index.html>.

<sup>112</sup> *Md. Arch.*, XXVI, 39, 116.

<sup>113</sup> *Ibid.*, XXVI, 134.

<sup>114</sup> *Ibid.*, pp. 389-412.

<sup>115</sup> *Ibid.*, XXV, 249.

<sup>116</sup> Chancery Record 2, pp. 590-594.

<sup>117</sup> *Ibid.*, p. 593. William Bladen was the attorney general of the province and one of the aldermen of Annapolis under the first charter (Owings, *His Lordship's Patronage*, pp. 133-134; Chancery Record 2, pp. 590-591; Elihu S. Riley, "*The Ancient City.*" *A History of Annapolis, in Maryland, 1649-1887* (Annapolis: Record Printing Office, 1887), p. 86), and Wornell Hunt was a lawyer and the recorder of Annapolis under the first charter (Chancery Record 2, p. 590; Riley, *The Ancient City*, p. 86), although the record of the lower house makes him one of the aldermen. *Md. Arch.*, XXVII, 216.

<sup>118</sup> *Ibid.*, pp. 197, 202.

<sup>119</sup> *Ibid.*, p. 200.

<sup>120</sup> *Ibid.* pp.184, 184-185, 185, 186, 188, 200, 203, 206, 207, 211.

<sup>121</sup> First charter of Annapolis, in Chancery Record 2, p. 593.

<sup>122</sup> 1696, c. 24, *Md. Arch.*, XIX, 498-504.

<sup>123</sup> First charter of Annapolis, in Chancery Record 2, p. 591.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*, pp. 591-592. The recorder had to be "learned in the Laws." He was "a certain magistrate or judge having criminal and civil jurisdiction in a city or borough." *Oxford English Dictionary Online*, definition 1.a.

<sup>126</sup> First charter of Annapolis, in Chancery Record 2, p. 592.

<sup>127</sup> *Ibid.*, p. 591.

<sup>128</sup> *Ibid.*

<sup>129</sup> For this suggestion, see David W. Jordan, *Foundations of Representative Government in Maryland, 1632-1715* (New York: Cambridge University Press, 1987), p. 224.

<sup>130</sup> First charter of Annapolis, Chancery Record 2, pp. 590-591.

<sup>131</sup> Since the petition to the lower house has not survived, there is no way to know exactly what the petitioners said. The petitioners did, however, petition *against* the charter. *Md. Arch.*, XXVII, 210, 213.

Probably the concerns of the petitioners were similar to those that the delegates expressed to Seymour on 4 October 1708 and that later petitioners expressed to Seymour. I deal with those concerns immediately below.

<sup>132</sup> *Md. Arch.*, XXVII, 209-210.

<sup>133</sup> *Ibid.*, p. 213.

<sup>134</sup> For Macnemara's disbarment and his sitting in the stocks bare-breeched, see earlier in this chapter at Notes 102-106.

<sup>135</sup> For the quarrel between Macnemara and his wife, see Chapter 4, "Not-So-Loving Spouses, 1707-1708."

<sup>136</sup> Wornell Hunt and William Bladen requested that their responses be deposited in writing with the clerk of the lower house. *Md. Arch.*, XXVII, 216. Apparently, however, the responses have not survived.

<sup>137</sup> *Md. Arch.*, XXVII, 216. The delegates' use of the words "Manner and form" makes it clear that they were questioning both Seymour's claim to the power to issue the charter without consulting them and with the actual contents of the

charter that he issued.

<sup>138</sup> *Md. Arch.*, XXVII, 218, 221.

<sup>139</sup> *Ibid.*, p. 218.

<sup>140</sup> *Ibid.*, p. 190.

<sup>141</sup> Seymour was commissioned governor on 12 February 1702/3 and assumed office on 12 April 1704. Owings, *His Lordship's Patronage*, p. 120.

<sup>142</sup> Seymour's sentence here does not make sense. He says that the delegates would have shown more discretion if they had "wholly proceeded thereon" rather than expel the two delegates from Annapolis, but he has no clear reference for "thereon." Presumably he meant that the delegates should have accepted his claim that he had a right to issue the charter and should have proceeded to the business of the lower house, but possibly he meant that if the delegates had proceeded to a discussion of the whole basis of the authority for their elections they would have decided that the delegates from Annapolis had as much right to sit in the lower house as the other delegates did.

<sup>143</sup> *Md. Arch.*, XXVII, 191. In the records of the lower house Seymour's speech is not included in full but is only summarized. *Ibid.*, pp. 219-220.

<sup>144</sup> First charter of Annapolis, in Chancery Record 2, p. 593.

<sup>145</sup> *Ibid.*, pp. 590-592. The recorder, aldermen, and common-councilmen would serve during good behavior, while the mayor would be elected every year on the feast day of St. Michael — 29 September. On the death or the removal of the mayor, recorder, or an alderman the remaining aldermen and the mayor if he was alive would meet within one month to choose a successor. The mayor had to come from among the aldermen; the aldermen had to come from among the common-councilmen; and the recorder had to be someone learned in the law.

<sup>146</sup> First charter of Annapolis, in Chancery Record 2, p. 594.

<sup>147</sup> The single county justice could hear any civil case in which the “reall Debt or Damages” did not exceed two hundred pounds of tobacco or £0.16.8 in money. 1704, c. 31, *Md. Arch.*, XXVI, 284.

<sup>148</sup> See the act by which the assembly confirmed the second charter of Annapolis. 1708, c. 7, *Md. Arch.*, XXVII, 358-359.

<sup>149</sup> First charter of Annapolis, in Chancery Record 2, p. 590.

<sup>150</sup> 1696, c. 24, *Md. Arch.*, XIX, 499, 501-502.

<sup>151</sup> *Ibid.*, pp. 500-501.

<sup>152</sup> *Ibid.*, p. 500.

<sup>153</sup> *Ibid.*, p. 501. The delegates might also have been concerned about land that had been distributed under the act of 1683. 1683, c. 5, *Md. Arch.*, VII, 612-615.

<sup>154</sup> 1704, c. 93, *Md. Arch.*, XXVI, 429-430. An earlier act is 1694, c. 1, *Md. Arch.*, XIX, 100-101.

<sup>155</sup> *Md. Arch.*, XXVII, 191-192, 220-221.

<sup>156</sup> *Ibid.*, pp. 192-193, 221. For Seymour’s resentment over the delegates’ rejection of the clerk he had chosen, see *ibid.*, pp. 185, 186, 201.

<sup>157</sup> David W. Jordan, “Political Stability and the Emergence of a Native Elite in Maryland,” in Thad W. Tate and David L. Ammerman, eds., *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society* (Chapel Hill: The University of North Carolina Press, 1979), pp. 260-261; David W. Jordan, “Elections and Voting in Early Colonial Maryland,” *Maryland Historical Magazine*, LXXVII, No. 3 (Fall 1982), pp. 250-251; Jordan, *Foundations of Representative Government in Maryland, 1632-1715*, pp. 224-225.

<sup>158</sup> The petitioners to the lower house had petitioned *against* the charter (*Md.*



*Arch.*, XXVII, 210, 213), and the delegates had voted unanimously that Seymour had no right to grant it in the “*Manner and fform*” in which he had granted it. *Ibid.*, p. 216. Emphasis added.

A request only for changes in the charter, without the challenge to his authority, Seymour could consider with more sympathy.

<sup>159</sup> It is impossible to tell for sure when the residents of Annapolis presented this second petition. The pages in the Chancery Record immediately before the two charters and the petition are entered are for 10, 17, and 18 February 1707/8. Chancery Record 2, pp. 588-589. Seymour granted the petition on 18 November 1708 (*ibid.*, p. 596), and the next record is for 13 July 1708 (*ibid.*, pp. 603-606), then 26 November 1708. *Ibid.*, pp. 606-612.

<sup>160</sup> Elihu S. Riley misreads the list of petitioners, and in doing so he has twelve common-councilmen rather than ten. If he had not left out John Beale, who should appear between Matthew Beard and Thomas Jones, he would have had thirteen common-councilmen. Chancery Record 2, pp. 595-596; Riley, *The Ancient City*, pp. 86-87. For Riley’s list and the correct list, see Ellefson, *Governor John Seymour and the Charters of Annapolis — 1708*, p. 50, at <http://www.aomol.net/000001/000749/html/index.html>.

By the charter of 22 November 1708 the mayor, recorder, and aldermen were the same, and again they would elect the ten original members of the common council. Chancery Record 2, pp. 597-598; Riley, *The Ancient City*, pp. 87-88.

The seventeen men included as inhabitants were “the greater part of the Inhabitants” of Annapolis, meaning, apparently, the greater part of the free white male adult residents who were not officers of the corporation. Chancery Record 2, pp. 595-596; Riley, *The Ancient City*, pp. 86-87.

<sup>161</sup> Chancery Record 2, pp. 595-596; Riley, *The Ancient City*, pp. 86-87. “Person,” obviously, meant “man.” In his explanation to the Board of Trade Seymour mentions only one petition. “The Titles of the Severall Laws made the Last Session of Assembly in December 1708 with Remarques thereon,” *Maryland Historical Magazine*, XVII, No. 2 (June 1922), pp. 221-222; “Some Remarques on Several Acts of Assembly made the Last Session,” *ibid.*, XVII, No. 3 (September 1933), pp. 289-290.

Seymour also mentions the trouble over the charter in a letter to the Council of Trade and Plantations, 10 January 1708/9: The delegates “disputed what they had no cognizance of, vizt. the legality of a charter I granted to the City of Annapolis (by the advice of H. M. Council) . . .” TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIV, No. 290 (p. 195).

<sup>162</sup> Chancery Record 2, p. 596; Riley, *The Ancient City*, p. 87.

<sup>163</sup> Chancery Record 2, pp. 596-602; Riley, *The Ancient City*, pp. 87-91.

<sup>164</sup> *Md. Arch.*, XXVII, 225, 265.

<sup>165</sup> *Ibid.*, pp. 229, 271.

<sup>166</sup> The record of the lower house leaves out the words “most sacred.”

<sup>167</sup> *Md. Arch.*, XXVII, 229-230, 272.

<sup>168</sup> *Ibid.*, pp. 230, 272.

<sup>169</sup> *Ibid.*, pp. 230, 273.

<sup>170</sup> *Ibid.*, p. 273.

<sup>171</sup> *Ibid.*, pp. 232-233, 274-275. The complaint about the toll is not understandable from the *Archives* alone but requires a reference to the first charter, by which Seymour provided that the corporation could levy a tax of six pence on every beast and five percent of the value of any commodity sold at a fair. Chancery Record 2,

p. 594.

<sup>172</sup> *Md. Arch.*, XXVII, 233-234, 274-276, 276.

<sup>173</sup> Chancery Record 2, pp. 598-599, 599-600; Riley, *The Ancient City*, pp. 88, 89-90.

<sup>174</sup> By an act of 1704 the delegates would receive 140 pounds of tobacco for every day they attended the assembly. They also would be reimbursed for their itinerant charges, the costs of getting to and from Annapolis. 1704, c. 70, *Md. Arch.*, XXVI, 352-353.

<sup>175</sup> 1708, c. 7, *Md. Arch.*, XXVII, 358-360.

<sup>176</sup> Second Charter of Annapolis, in Chancery Record 2, p. 601; Riley, *The Ancient City*, p. 90.

<sup>177</sup> First Charter of Annapolis, in Chancery Record 2, p. 594.

<sup>178</sup> 1708, c. 7, *Md. Arch.*, XXVII, 359.

<sup>179</sup> David Jordan goes further than this.

This legislation effectively concluded the Assembly's efforts to assert full control over all elections. Representation could henceforth be bestowed only by act of Assembly, not by executive measures.

Jordan, "Elections and Voting in Early Colonial Maryland," p. 251.

<sup>180</sup> *Md. Arch.*, XXVII, 267.

<sup>181</sup> On Tuesday afternoon — 30 November 1708 — the Committee of Elections and Privileges reported "that as to the Members returned for the City of Annapolis they leave the Consideration of them to the House." *Ibid.*, p. 270. But it was not until Friday, 3 December, that the lower house informed Hunt and Bordley that the "House do not admit them as Members till the Bill be past." *Ibid.*, p. 278.

The session lasted from 29 November of 17 December 1708. *Ibid.*, pp. 225,

259, 265, 334.

<sup>182</sup> *Ibid.*, pp. 260-263, 333-334.

<sup>183</sup> *Ibid.*, pp. 377, 409. At the session of the assembly that began on 25 October 1709 Wornell Hunt continued to have his problems. While the delegates would allow him to be the recorder of Annapolis, they ruled that he was not eligible to sit in the lower house because he had not lived in the province for three years before he was elected (*Md. Arch.*, XXVII, 414), as the law required. 1694, c. 1, *Md. Arch.*, XIX, 100-101; 1704, c. 93, *Md. Arch.*, XXVI, 429-430.

For Seymour's opinion of those laws, see Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 78-79.

<sup>184</sup> *Md. Arch.*, XXVII, 213.

<sup>185</sup> *Ibid.*, XXV, 234-235.

<sup>186</sup> Chancery Record 2, pp. 595-596; Riley, *The Ancient City*, pp. 86-87.

<sup>187</sup> *Md. Arch.*, XXVII, 181, 197.

<sup>188</sup> *Ibid.*, pp. 181-193, 197-221. See also Text above at Notes 155-156.

<sup>189</sup> *Md. Arch.*, XXVII, 225, 265.

<sup>190</sup> *Ibid.*, p. 298.

<sup>191</sup> For county justices serving in the lower house, November 1708:

Anne Arundel County

Richard Jones	Quorum justice
Charles Greenberry	Quorum justice
Daniel Mariarte	Non-quorum justice

Baltimore County

James Maxwell	Chief justice
James Philips	Quorum justice
Richard Colegate	Non-quorum justice
Aquilla Paca	Non-quorum justice

## Calvert County

Walter Smith	Chief justice
John Mackall*	Probably non-quorum justice
Robert Skinner	Non-quorum (?) justice

## Cecil County\*\*

Matthias Vanderheyden	Quorum justice
Edward Larremore***	Probably non-quorum justice

## Charles County

James Smallwood	Quorum justice
William Wilkinson	Quorum justice
Thomas Crabb	Non-quorum justice

## Dorchester County

Walter Campbell	Quorum justice
Joseph Ennalls	Non-quorum justice

## Kent County

John Carville****	Quorum justice
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## Prince George's County

Robert Bradley	Chief Justice	Speaker
Robert Tyler	Quorum justice	

## Somerset County

John West	Chief Justice
John Franklin	Quorum justice

## St. Mary's County

Thomas Trueman Greenfield	Non-quorum justice
Joshua Guibert	Non-quorum justice
Henry Peregrine Jowles	Non-quorum justice

## Talbot County

Robert Ungle	Quorum justice
Thomas Robins	Quorum justice

## Queen Anne's County

John Salter

Non-quorum justice

Philemon Hemsley

Non-quorum justice

\* John Mackall is not included in the twenty-seven justices because while he was a justice in Calvert County 1706 and 1710 the intervening period is uncertain.

\*\* By November of 1708 Thomas Frisby might also have been a justice of Cecil County, since he was a justice by 1708/9. He is not included in the twenty-seven.

\*\*\* Edward Larremore of Cecil County is not included in the twenty-seven justices because while he was a justice ca.1702 and in 1708/9 the intervening period is unclear.

\*\*\*\* John Carville of Kent County is included in the twenty-seven justices but was sick and so did not attend the session.

Source for delegates:

*Biographical Dictionary*, I, 38.

Sources for justices:

Anne Arundel County Court Judgment Record, Liber T. B., No. 2, pp. 1-2;

Baltimore County Court Proceedings, Liber I. S., No. A, p. 1;

Charles County Court Record, Liber B, No. 2, pp. 521-523;

Kent County Court Proceedings, 1707-1709, pp. 115a-116a;

*Md. Arch.*, XXIII, 128, 129; XXV, 108, 125;

*Biographical Dictionary*, biographies;

Prince George's County Land Record, Liber D, pp. 90-91;

Somerset County Land Records, Liber O-8, pp. 129-130 from back;

Talbot County Judgment Record, Liber R. F., No. 11, pp. 595-596.

<sup>192</sup> *Md. Arch.*, XXVII, 247, 307-308. The wording of the message to Seymour in the records of the lower house in the *Archives* is incomplete, and it has *insolvent* for *insolent*. The wording in the record of the upper house is also confusing.

<sup>193</sup> Benchers were the “principal officers of each inn of court . . .” in England. *Black’s Law Dictionary* (6th edition), p. 156.

<sup>194</sup> *Md. Arch.*, XXVII, pp. 248, 311. The wording in the record of the lower house in the *Archives* is again incomplete.

<sup>195</sup> “. . . altho’ the Infancy of this Province cannot in some Persons Opinion plead Prescription . . .” *Ibid.*, pp. 252, 313.

One of the meanings of “prescription” is

the acquirement of the title or right to something through its continued use or possession from time immemorial or over a long period.

*Webster’s New World Dictionary of the American Language* (College edition; 1959).

<sup>196</sup> *Md. Arch.*, XXVII, 252, 313. The record of the upper house in the *Archives* has *censure* for *construe*, and it has *prosperity* for *posterity*.

The bill to which the delegates refer must be the bill that became 1708, c. 8, *Md. Arch.*, XXVII, 360-362, “An Act ascertaineing fees to the Attorneys and Practitioners of the Law in the Courts of this province & for Levying of the same by way of Execution.” As explained here in the Text at Notes 195-210, by this act the delegates bargained away Macnemara’s right to practice in the province.

<sup>197</sup> On 7 December 1708 the Committee of Aggrievances of the lower house reported that it was a grievance that attorneys’ fees in the province were left to the discretion of the justices of the several courts. Since that was “of ill Consequence to the Suitors” of the courts, the Committee recommended that the assembly pass an act to regulate those fees. The delegates ordered the Committee of Laws to bring in such

a bill. *Md. Arch.*, XXVII, 290.

<sup>198</sup> *Ibid.*, pp. 253, 316.

<sup>199</sup> *Ibid.*, pp. 253-254, 317.

<sup>200</sup> *Ibid.*, pp. 254, 319.

<sup>201</sup> The English statutes to which the delegates referred are 15 Edward II, c. 1, in Pickering, *The Statutes at Large*, I, 360-362 (1322), and 4 Henry IV, c. 18, in *ibid.*, II, 438 (1402).

While 15 Edward II, c. 1, might be considered ambiguous, 4 Henry IV, c. 18, makes it clear that in England justices could admit attorneys. The record of the lower house in the *Archives* has 13 Edward II, c. 1.

<sup>202</sup> *Md. Arch.*, XXVII, 255, 319.

<sup>203</sup> The wording of the members of the upper house is that they had “made and Expressed” “so many Condescensions and so much fair Temper” toward the delegates during the session. My reading of this is that by using the word “condescensions” the members of the upper house were only trying to emphasize how wonderfully cooperative they had been during this session and were not saying that they were so superior to the delegates that it was a great condescension for them to communicate with them with a “fair Temper.” Obsolete meanings of “condescension” are “CONCESSION, ACQUIESCENCE.” *Webster’s Third New International Dictionary of the English Language Unabridged* (1981).

During this session Seymour and the members of the upper house had in fact made concessions to the delegates. They had made concessions on the incorporation of Annapolis, and they had agreed to delay consideration of the assizes to the next session (*Md. Arch.*, XXVII, 239, 285, 287), to allow the county justices to regulate ordinary licenses until her Majesty’s pleasure was known (*ibid.*, pp. 240, 242, 286,



294-295), to increase the jurisdiction of the county courts (*ibid.*, pp. 243, 244, 295-296, 300), and to allow the assembly rather than the justices to set the fees of attorneys. *Ibid.*, p. 290; 1708, c. 8, *Md. Arch.*, XXVII, 360-362.

The members of the upper house did *not* agree to make dog dollars current at five shillings sterling. *Md. Arch.*, XXVII, 243, 297-298. A dog dollar was a silver dollar of the Netherlands. *Webster's Third New International Dictionary of the English Language Unabridged* (1981).

<sup>204</sup> The word in the record is “ungrateful,” but one of the meanings of “ungrateful” is “offensive to the senses: HARSH, REPELLENT.” *Webster's Third New International Dictionary of the English Language Unabridged* (1981).

<sup>205</sup> The word in the record is “challenge.” An obsolete meaning of “challenge” is “demand.” *Ibid.*

<sup>206</sup> The source for the claim of the upper house that a person had to have the king's grant to appoint his attorney was “Fitz: Natura Brevium fol 25.” “Fitz: Natura Brevium fol 25” is Anthony Fitzherbert (1470-1538), *The New Natura Brevium*, of which there were at least six editions in English by 1704. See Library of Congress, *National Union Catalogue*.

Actually the members of the upper house were referring to what appears on page 55 of the 1704 edition of *The New Natura Brevium* (London: Printed by the Assigns of Richard and Edward Atkins). The original record of the upper house, however, does have folio 25.

<sup>207</sup> The record of the upper house in the *Archives* has “debated on the Country,” while the record of the lower house has “delated on the Country.” “Delated” makes the better sense, since archaic meanings of “delate” are “delegate,” “refer,” and “transfer.” *Webster's Third New International Dictionary of the English Language*

*Unabridged* (1981).

The original records of the upper house for the session from 29 November to 17 December 1708 are so fragile that I did not check thoroughly for “debated” or “delated.” Assembly Proceedings, Upper House, Proceedings, 1708, Folders 29½ (14) and 29½ (15).

<sup>208</sup> *Md. Arch.*, XXVII, 255-256, 322.

<sup>209</sup> *Ibid.*, p. 322.

<sup>210</sup> 1708, c. 8, *Md. Arch.*, XXVII, 360-362.

<sup>211</sup> Alan F. Day says that Macnemara practiced simultaneously in Maryland and Pennsylvania. Alan F. Day, “Lawyers in Colonial Maryland, 1660-1715,” *The American Journal of Legal History*, XVII, No. 2 (April 1973), p. 150, 150n.; Day, *A Social Study of Lawyers in Maryland, 1660-1775*, p. 32. It appears more likely, however, that Macnemara practiced in Pennsylvania only while he was disbarred in Maryland.

<sup>212</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; *Md. Arch.*, XXXIII, 141-144, 220, 225-226.

<sup>213</sup> *Md. Arch.*, XXXIII, 141-144, 220, 225-226.

<sup>214</sup> *Minutes of the Provincial Council of Pennsylvania, from the Organization to the Termination of the Proprietary Government*, II (Philadelphia: Jo. Severns & Co., 1852), p. 457.

<sup>215</sup> *Ibid.*, p. 458.

<sup>216</sup> *Md. Arch.*, XXXIII, 220.

<sup>217</sup> Provincial Court Judgment Record, Liber P. L., No. 2, p. 612. There are no surviving records of the assizes for Anne Arundel County for May of 1709.

For the surviving records of the assizes during their first incarnation, from May of 1708 through September of 1710, see Ellefson, *The County Courts and the Provin-*

*cial Court in Maryland, 1733-1763*, pp. 491-493.

<sup>218</sup> Owings, *His Lordship's Patronage*, p. 120; Council of Maryland to Council of Trade and Plantations, 31 August 1709, TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIV, No. 707.

<sup>219</sup> Owings, *His Lordship's Patronage*, p. 120.

<sup>220</sup> *Md. Arch.*, XXVII, 381.

<sup>221</sup> *Ibid.*, pp. 414-415, 415. The delegates recommended that the Committee of Laws “inspect the late Act relating to Attorneys at Law . . . and report to the House their Sense upon the Prayer of the Petitioner.” The act to which the delegates refer must be 1708, c. 8, *Md. Arch.*, XXVII, 360-362, “An Act ascertaining fees to the Attorneys and Practitioners of the Law in the Courts of this province & for Levying of the same by way of Execution,” the act by which the assembly ratified Seymour’s suspension of Macnemara.

<sup>222</sup> 1709, c. 14, *Md. Arch.*, XXVII, 485-486. In June of 1715, when John Hart had been governor for just over a year, the assembly again provided that while the justices could admit and suspend attorneys in their courts they could not admit anyone whom the governor and his council had already rejected or who refused to take the appropriate oaths. 1715, c. 48, *Md. Arch.*, XXX, 252.

Hart arrived in Maryland on 29 May 1714 (Owings, *His Lordship's Patronage*, p. 120), and he signed this bill on 3 June 1715. *Md. Arch.*, XXVII, 90, 220.

<sup>223</sup> *Ibid.*, pp. 404-405, 463-464, 486.

<sup>224</sup> Provincial Court Judgment Record, Liber P. L., No. 3, p. 104.

<sup>225</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, p. 91.

<sup>226</sup> Baltimore County Court Proceedings, Liber I. S., No. A, p. 93.

<sup>227</sup> *Md. Arch.*, XXV, 226-227.

<sup>228</sup> Provincial Court Judgment Record, Liber P. L., No. 3, p. 104. The records of the Prince George's County court for November of 1709 and March of 1710 say nothing about Macnemara's being readmitted there (Prince George's County Court Record, Liber D, pp. 231-273, 276-315), and since the records of Calvert County have not survived, we cannot know when Macnemara was readmitted as an attorney there.

<sup>229</sup> David Jordan says that "The members of the upper house often agreed in substance with their colleagues in the lower chamber but were still bound by a special oath to uphold the wishes of the Crown." Jordan, *Foundations of Representative Government in Maryland, 1632-1715*, p. 227.

<sup>230</sup> Jordan, "Political Stability and the Emergence of a Native Elite in Maryland," pp. 265-273.

<sup>231</sup> *Md. Arch.*, XXVII, 255, 322, and Text above at Notes 203-207.

<sup>232</sup> It is not inconceivable that Seymour himself dictated the flattering language to William Bladen, the clerk of the council and of the upper house. No more than John Hart after him was John Seymour distinguished by his modesty. It is also possible that the sycophantic Bladen created the language himself. For Bladen, see Ellefson, *William Bladen of Annapolis, 1673?-1718*.

<sup>233</sup> The wording of 1708, c. 8, makes it appear that the assembly might have intended Macnemara's suspension to last only as long as Seymour did. The justices could not admit to the practice of law anybody who had "been already refused so to do by his Excellency and her Majestys hon<sup>ble</sup> Council," *not* by her Majesty's governor and his council. 1708, c. 8, *Md. Arch.*, XXVII, 362.

<sup>234</sup> TNA (PRO), Colonial Office 5, Vol. 717, Item 18 (pp. 53-55); *Md. Arch.*, XXIX, 3-4, 4-5, 6, 34, 36, 37-38; XXX, 492. The reason for the disallowances was that the wording of the laws stated that they were passed with the advice and consent

of the council and assembly rather than with the advice and consent of the president, council, and assembly.

<sup>235</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, p. 91; Provincial Court Judgment Record, Liber P. L., No. 3, p. 104. By the time the assembly found out about the disallowance of the law re-establishing Macnemara's right to practice, in October of 1711 (*Md. Arch.*, XXIX, 3-4, 34), he had been disbarred again for killing Thomas Graham. See Chapter 5, "Railroading, 1710-1713," at Note 68.

<sup>236</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, p. 114.

<sup>237</sup> For *cepi* as the endorsement meaning that the official had served the writ, see *Black's Law Dictionary* (6th edition), p. 225; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 184.

<sup>238</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, pp. 115, 119, 121. The record reveals no details of Edward Carroll's assault of Macnemara, and therefore we cannot tell when it occurred.

<sup>239</sup> Council of Maryland to the Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231, 231-234; Chapter 5, "Railroading, 1710-1713," at Note 68.

*Chapter 4*  
*Not-So-Loving Spouses, 1707-1708*

If Thomas Macnemara found it difficult to get along with his acquaintances and colleagues, whether through his fault or theirs, his relationship with his wife was none-too congenial either, and they lived together for only three-and-a-half years.

According to the members of the council, writing to the Board of Trade on 18 July 1712, Macnemara started life in Maryland as the servant of Charles Carroll, a wealthy and prominent Catholic,<sup>1</sup> even though he had been “bred with an able . . . [attorney] in the Kingdom of Ireland.”<sup>2</sup> As “a ready penman,” he lived with Carroll and his family. He had been living there for scarcely a year when “among sundry other Insolencies & abuses,” as the members of the council were informed, he deflowered Carroll’s niece Margaret,<sup>3</sup> but not, the lady affirmed, “without very much force.” Carroll freed Macnemara so that he could marry her, and soon after that Macnemara started practicing law.<sup>4</sup>

Thomas and Margaret Macnemara had one son, Michael,<sup>5</sup> but from the beginning the chances for such a marriage must have seemed less than auspicious. When in 1707 the marriage came to a crisis Macnemara exhibited his usual defiance of authority even though he must have known that it would only cause him additional trouble and that in the end he would have to give in anyway.

The legal battle between the Macnemaras, which also became a legal battle between Thomas Macnemara and Governor John Seymour, lasted for at least six months, and it was another four-and-a-half months before Macnemara got out from under the bonds that he had to give. On Margaret Macnemara's complaint on 19 August 1707 or earlier<sup>6</sup> Samuel Young, one of the justices of the provincial court,<sup>7</sup> required Macnemara to enter a bond of eight hundred pounds sterling to guarantee his good behavior toward her for one year from the date of the bond. Such a bond for good behavior was almost unheard of,<sup>8</sup> and apparently Macnemara could not raise it. He might have spent some hours in jail, but on that same day he again appeared before Young, this time with a *habeas corpus*, and requested to be bailed. Young cut Macnemara's bond in half, and this time he was able to find four sureties.<sup>9</sup>

At the provincial court for September of 1707, which opened on the day that Seymour disbarred Macnemara,<sup>10</sup> Macnemara argued that even bail of four hundred pounds sterling was the result of Margaret Macnemara's groundless accusations, was extra-ordinary, and was "contrary to the course of the common law." The justices ordered the sheriff or the officers concerned in the case to transmit the accusation and everything relating to it to the provincial court so that they could do justice to Macnemara.

The justices got the record during that same term. On 11 October John Freeman, the register in chancery,<sup>11</sup> reported what had happened earlier. On 19 August 1707 Macnemara had appeared before Samuel Young pursuant to a writ of *habeas corpus* and requested to be bailed, "being Accused of Violently beating bruising and threatning his wife" so that she was afraid for her life. Young thought that that was reasonable and required Macnemara to enter a new bond, this one of four hundred pounds sterling, to guarantee his good behavior toward his wife and all of her Maj-

esty's good subjects, apparently for one year, though part of the record is eaten away. Joseph Hill, Andrew Wellsly, Joseph Howard, and Thomas Freeborne became his sureties of one hundred pounds sterling each.<sup>12</sup>

The justices agreed with Macnemara and decided that the bond of four hundred pounds sterling was unreasonable and extravagant and canceled it. They then required Macnemara to give security of one hundred pounds sterling with two sureties of fifty pounds each to guarantee his appearance at the next provincial court and to guarantee his good behavior toward Margaret Macnemara as well as toward all the queen's other subjects in the meantime. Joshua Cecil, a gentleman from Prince George's County, and Edward Butler, a gentleman from Calvert County, became his sureties.<sup>13</sup>

Long before Macnemara had to appear at the provincial court for April of 1708, however, Governor Seymour got involved in the quarrel. On 13 October 1707, two days after Macnemara entered the bond of one hundred pounds sterling at the provincial court,<sup>14</sup> Seymour, sitting in chancery with John Hammond, one of the members of his council,<sup>15</sup> heard the petition of Margaret Macnemara, "the unfortunate Wife" of Thomas Macnemara.

Earlier, Margaret Macnemara pointed out, after much patience she had been "of Absolute necessity Constrained" to seek redress against "the Cruel, Barbarous and Inhuman Usage of an Unnatural Husband."<sup>16</sup> Now once more she was compelled "by his Continued Intollerable Rigours, severitys and Unchristian Dealings" to implore Seymour for protection from his barbarity. That barbarity was

daily Manifested to y<sup>e</sup> World, not only by Threats sufficient from a Man of his ungovernable Temper to frighten a poor Helpless Woman out of her Life, but also by Merciless stripes, the Most scurrilous Language unbecomeing a Man, [and] Tyrrannicall haughty Domineering Carriage too severe



to be used even to slaves.

Macnemara's beastly lust, Margaret Macnemara blushed to point out, "his Indifferency in Choice of White or black, Clean or foul," was "such that Nature's Law, self preservation," dictated "the Danger of Commerce" with him.

Since it was evident that she could not be safe living under the same roof with Macnemara, especially since "frequently in his Mad Raptures" he had exclaimed against himself "for not Makeing Away" with her, she humbly prayed that Seymour would take whatever measures he considered necessary to preserve her life against Macnemara's barbarous cruelties. She requested that she be permitted to live separately and that Seymour allow her such reasonable maintenance as he, after considering Macnemara's circumstances, considered appropriate.

Margaret Macnemara requested further that Seymour require Macnemara to give good security to guarantee his performance of whatever Seymour might require of him. Otherwise, she pointed out, she could "be sure of being Left Destitute of Any support" from him, and she and her poor child<sup>17</sup> would be left to the charity of the county. She hoped that Seymour would prevent that.

Since Margaret Macnemara was "so stripped" that she had "not wherew<sup>th</sup> to shift her self," she requested finally that Seymour order Macnemara "to Deliver her Clothes and Other little necessaries" to her.<sup>18</sup>

Seymour immediately ordered that Macnemara be summoned to appear forthwith. When the officer who served the summons<sup>19</sup> reported that Macnemara had gone out of town, Seymour ordered that he appear at ten o'clock on 16 October, three days later.

On the sixteenth Macnemara did appear before Seymour and Hammond. When Margaret Macnemara's petition was read to him, however, he obstinately refused to

answer it but, “pretending to support this his plea by the practice of the Spiritual Courts” in England, claimed that the chancery court did not have jurisdiction in disputes between spouses.<sup>20</sup> Seymour and Hammond decided, however, that “the Infancy, Low Circumstances and present Constitution” of the province prevented them from pursuing the case in a spiritual court because no such court existed there.

Seymour now adopted the injudicious and prejudicial tactic of considering things that he had heard outside the court as evidence on which to base a legal judgment. He was “Convinced not only by undeniable Testimonies<sup>21</sup> but Even by his own Knowledge” of Macnemara’s inhumanity and barbarity toward his wife. That inhumanity and barbarity had been manifested to Seymour as well as to all of her Majesty’s “Councill in Assembly” — the upper house — before whom Margaret Macnemara had

Appeared not Long since . . . so battered, bruised and  
Inhumanly beaten in most parts of her body that had she not  
been of a Constitution more than ordinary strong she Could  
hardly have recovered it . . . .<sup>22</sup>

Seymour, finding by daily experience that Macnemara had “a Mad, Turbulent, furious ungovernable Temper,” decided “for the preservation of the poor Petitioners [*sic*] Life” to order that beginning that day and continuing for as long as Margaret and Thomas Macnemara lived separately Macnemara pay her fifteen pounds sterling per year, preferably in quarterly but “at least by half Yearly” payments. He also ordered Macnemara to deliver to Margaret the “Wearing Cloths and other small necessaries” that belonged to her and that he listed.<sup>23</sup>

Macnemara requested an appeal to the Archbishop of Canterbury and asked for a copy of Seymour’s order to send to England. Seymour granted his request but directed that Macnemara obey the order of the chancery court until he received the

decision of the Archbishop.<sup>24</sup> Of that order Macnemara was to take notice at his peril.

Finally Seymour directed that the sheriff of Anne Arundel County, Josiah Wilson, serve the order on Macnemara immediately and report back to him.<sup>25</sup> Two days later — on 18 October 1707 — Wilson returned Seymour's order with the endorsement that when he served it Macnemara told him that he would not obey it and that neither the law nor anyone else could oblige him to.

Two days after that John Freeman, the register in chancery,<sup>26</sup> gave a copy of all of these proceedings to Macnemara. On that same day, after consulting with William Bladen, the attorney general, and Wornell Hunt, a lawyer, about Macnemara's "obstinate Refusing to obey" the order, in contempt of Seymour's authority as governor and Keeper of the Great Seal, Seymour directed that an order be issued forthwith to the sheriff of Anne Arundel County to arrest Macnemara, keep him in safe and close custody, and have him before the high court of chancery on 8 February 1707/8 to answer for his contempt concerning the order that Seymour had issued in response to Margaret Macnemara's petition as well as to answer concerning other matters and things that might then and there be alleged against him.<sup>27</sup>

Why Seymour delayed Macnemara's appearance for three-and-a-half months is unclear. He might simply have wanted the obnoxious Macnemara to rot in jail for a while: later there would be a great commotion over Thomas Smithson's granting Macnemara bail.<sup>28</sup> It was not as though the chancery court would not meet again until February: it was always open,<sup>29</sup> and it did meet in the meantime.<sup>30</sup>

On a date that the record does not note Josiah Wilson returned the writ against Macnemara with the endorsement that he had taken Macnemara into his custody but that on 3 November 1707 Macnemara was discharged out of his custody through a

writ of liberate<sup>31</sup> directed to him by Thomas Smithson, the chief justice of the provincial court.<sup>32</sup>

On 17 November 1707 Seymour consulted again with Bladen and Hunt as well as with Charles Carroll, another lawyer, to consider Macnemara's contemptuous behavior toward the court and his disobedience to Seymour's order. One of these men, apparently, informed Seymour that Macnemara "had Notice by some Means or other" of the attachment against him several days before Wilson served it and by imposing on the clerk of the provincial court got a blank writ of *habeas corpus*, which he took to William Holland, one of the justices of the provincial court, and so far imposed on him that he signed the writ.<sup>33</sup> Thus even before Wilson had Macnemara in his custody on the attachment against him he was directed through the *habeas corpus* to have him before Smithson. Smithson, using the Habeas Corpus Act of 1679<sup>34</sup> as a "pretext," "ignorantly or willfully designing to interfere" with the jurisdiction of the court of chancery, bailed Macnemara before the return of the attachment against him.

As a result of Smithson's "obstinate & Contemptuous dealings," Macnemara still stood out against the order of the chancery court. Therefore Seymour ordered the issuing of a second attachment directed to Josiah Wilson, this time as her Majesty's serjeant-at-arms, and to his deputy or deputies ordering them to arrest Macnemara and keep him in close custody so that he would appear before the chancery court on 8 February 1707/8 to answer for his contempt.<sup>35</sup> Smithson, however, freed Macnemara again on another *habeas corpus*.<sup>36</sup>

Macnemara ignored Seymour's order that he appear in chancery on 8 February 1707/8. Ten days after Macnemara was supposed to appear — on 18 February 1707/8 — Seymour was unable to get a full council together and so added Philemon Lloyd, a provincial justice who was in town, to the council for the day in order to get

his advice.<sup>37</sup> Lloyd and the four members of the council who were present<sup>38</sup> unanimously decided that it was highly reasonable that proper process issue to force Macnemara to comply with Seymour's order in chancery.<sup>39</sup>

On that same day Seymour sat in chancery again, and on the motion of Charles Carroll, who was acting as the attorney for his niece Margaret Macnemara, he ordered that since in spite of two attachments against Macnemara Thomas Smithson had set him free on writs of *habeas corpus* a third attachment be directed to Josiah Wilson to arrest him once more. This writ was returnable on 19 May 1708,<sup>40</sup> and therefore Seymour again expected to keep Macnemara in jail for three months before he could answer for his contempt.<sup>41</sup>

This time Seymour was more successful. On 19 February 1707/8, the day after Seymour ordered Macnemara's arrest for the third time and only two days after Macnemara had been set in the stocks bare-breeched,<sup>42</sup> Josiah Wilson brought a more cooperative Macnemara into the chancery court. Macnemara had to give in, but in his petition to Seymour he still had to get in his licks: Seymour was the one who had gone too far.

As a result of Seymour's "overvaluing" — with the advice of his council, Macnemara humbly perceived — what had been done on the two writs of *habeas corpus* that he had procured in Margaret Macnemara's case against him, Macnemara began, he was in Josiah Wilson's custody by virtue of a third precept of the high court of chancery, returnable the following May, for not obeying Seymour's order concerning Margaret Macnemara's clothes and maintenance.

Now, Macnemara assured Seymour as he had already assured Wilson, he was ready to comply with Seymour's decree in all parts and particulars as well as with any matter or thing that Seymour might require of him in the case, even though in the

past he had seemed unwilling to comply with Seymour's decree. Therefore he humbly desired Seymour to order Wilson to discharge him on his complying with such part of Seymour's decree as he was immediately supposed to comply with. If Seymour thought that it was proper to charge him with any contempt or to fine him, he hoped that Seymour would do that immediately for his — Macnemara's — relief. Seymour could act immediately, Macnemara concluded, since the chancery court was always open.

If that was not enough to satisfy Seymour, Macnemara would say it again. After the petition was read he repeated his assurance that he was willing and ready to comply with the decree, as he had stated in his petition, in all parts and particulars, including the payment of fifteen pounds sterling per year to his wife. He was also willing to pay the costs of the suit, and through Josiah Wilson he would deliver to Margaret Macnemara the clothes and other personal items that she requested.

Seymour accepted those assurances and ordered Wilson to release Macnemara. Wilson did immediately release him, and he also promised to see that Macnemara carried out his commitments.

Finally, Seymour ordered that if Macnemara and his wife were reconciled and began to live together again, Margaret Macnemara would return to Macnemara whatever portion of any payment of the fifteen pounds per year applied to the period after the reconciliation.

John Freeman, as the register in chancery, figured the costs of the action, 2204 pounds of tobacco, and on 2 March 1707/8 gave a copy to Wilson,<sup>43</sup> who as sheriff of Anne Arundel County would collect those costs from Macnemara.<sup>44</sup>

Now that he had agreed to everything that Seymour had demanded of him,

Macnemara might have thought that the provincial justices would discharge the bond of one hundred pounds sterling that he had entered at the provincial court for September of 1707 to guarantee his appearance at the provincial court for April of 1708, which was still a month away,<sup>45</sup> and to guarantee his good behavior toward Margaret Macnemara as well as toward all of the queen's subjects in the meantime.

If he did he was too optimistic. When he appeared at the provincial court for April of 1708 the justices denied his request that they discharge that recognizance and ordered instead that he still be held under bond to keep the peace. They did, however, grant his request that his appearance to the bond be entered in the record.<sup>46</sup>

Even though the provincial justices at their court for September of 1707 ruled that the bond of four hundred pounds sterling that Macnemara had entered on 19 August 1707 before Samuel Young was "void and of noe Effect," at the provincial court for April of 1708 Bladen sued Macnemara on behalf of the queen for the four hundred pounds sterling on that recognizance. Through Robert Gouldesborough, Macnemara, himself disbarred,<sup>47</sup> imparled until the next court, and at the provincial court for July of 1708 Gouldesborough argued that Bladen should have summoned Macnemara through a *scire facias* rather than a *capias ad respondendum*.

Gouldesborough had it right, and the justices quashed Bladen's suit.<sup>48</sup> The *capias ad respondendum* was used to summon a defendant at the beginning of a suit,<sup>49</sup> while the *scire facias* was used to summon a defendant to show cause why he should not satisfy a judgment or forfeit a recognizance.<sup>50</sup>

Why Bladen would sue Macnemara on that earlier bond is unclear. He might have wanted to prove himself a vigorous attorney general by suing everybody he could on behalf of the queen. Or he might already have decided that it was good politics to harass Macnemara at every opportunity. Whether he succeeded or failed,

the suit would cost Macnemara some tobacco. But Bladen did not sue again on that bond.

Finally, at the provincial court for July of 1708 Macnemara again asked the justices to discharge him from the recognizance of one hundred pounds sterling, and the justices did discharge that recognizance.<sup>51</sup>

While John Seymour was trying to get Thomas Macnemara to comply with his order on Margaret Macnemara's petition, he and his council were also trying to get Thomas Smithson to answer for bailing Macnemara twice when Seymour and his council thought that he should not have.

On 22 December 1707 Seymour managed "with great Difficulty" to round up three members of his council for a meeting primarily to consider Smithson's bailing of Macnemara. The weather was "very hard," but also several members of the council were "dead [and] others aged infirm and much indisposed."<sup>52</sup> "The Board happening to be very thin," Seymour asked Philemon Lloyd for his advice "upon an odd Accident" in the case of Thomas Macnemara and his wife.<sup>53</sup>

Since Lloyd's response does not appear in the records, it is impossible to know what that "odd Accident" was. Since one of the definitions of "accident" is something that happens with a "lack of intention or necessity: . . . often opposed to *design*,"<sup>54</sup> however, it might have been Smithson's bailing Macnemara. It appears more likely, though, that something occurred that does not appear in the record.

After Lloyd presented his views Seymour and the three members of his council who were present<sup>55</sup> read Smithson's letter justifying his action<sup>56</sup> and then asked Wornell Hunt and William Bladen, the two lawyers who were present, for their opinions on the Habeas Corpus Act of 1679, on Smithson's right to bail Macnemara, and



on Seymour's right to grant relief to Margaret Macnemara. Hunt and Bladen must have had the questions in advance, since they had their labyrinthine answers ready.

With typical eighteenth-century verbosity and with references to a profusion of English authorities, the two lawyers concluded that since there were no ecclesiastical courts in Maryland Seymour did have the right to grant Margaret Macnemara relief in chancery; that since the order for Macnemara's arrest came out of the chancery court the provincial court had no jurisdiction in the case; that the Habeas Corpus Act of 1679 applied only in criminal cases; that for those reasons in Macnemara's case the *habeas corpus* should not have been granted; and that therefore Macnemara should not have been bailed but should have been kept in jail.<sup>57</sup>

Neither Hunt nor Bladen was a model of judiciousness. Hunt, who on 22 December 1707 could have been in Maryland for no longer than slightly more than fourteen months at the most,<sup>58</sup> had been "Credibly Informed" that Seymour's predecessors in the court of chancery had allowed separate maintenance to abused wives on their applications, but he cited no evidence to verify his hearsay.<sup>59</sup> Bladen acknowledged that Margaret Macnemara's case did not quite fit his references, since Margaret Macnemara "was not turned off by her husband" and her husband did not prevent her return.<sup>60</sup> And he was not impressed by Smithson's citation of a case from Keble's *Reports*,<sup>61</sup> even though he admitted with his characteristic complacency that he neither had the book nor knew the case.<sup>62</sup>

Both Hunt and Bladen expressed their contempt for Smithson. Anyone who had "an ordinary Skill or knowledge in the Law" and who would "take paines to read the title preamble Enacting part and provisoe" of the Habeas Corpus Act, Hunt asserted, would find a proviso that the act did not apply in civil causes.<sup>63</sup>

Bladen was more harsh. Smithson never had understood this case,<sup>64</sup> but that

was not the worst of it.

The want of Courage as well as Integrity are certainly the Deepest blemishes and Irreparable Defects in a Councilour[.] On the other hand [word or words missing] and Ignorance weigh as heavy, and certainly lead to all confusion and Sorrow at the last, but [except] where there is Prudence  
 . . . .<sup>65</sup>

Thus Smithson was not only ignorant and imprudent but also lacked courage and integrity. And all of this coming from a man who was himself an exemplar of incompetence not only as attorney general but also as the clerk of the council and of the upper house, as printer to the province, and as a contractor building shoddy public buildings in Annapolis. And as a contractor Bladen was clearly corrupt as well.<sup>66</sup>

After hearing Hunt and Bladen, Seymour and the three members of his council unanimously decided what they no doubt had wanted to decide all along: Smithson's bailing of Macnemara was extra-judicial and illegal. They then ordered that if his health permitted Smithson should attend the next meeting of the council to explain what he had done.<sup>67</sup>

All of that happened on Monday, 22 December 1707, and there are no more records of the council until 17 February 1707/8, the day on which Seymour ordered Macnemara set in the stocks bare-breeched.<sup>68</sup> In the meantime, of course, Seymour had been dealing with Macnemara in the chancery court, and on the day after Macnemara's uncomfortable experience in the stocks Seymour and his council returned to the Macnemaras and Smithson.

On the eighteenth the four permanent members of the council who were present<sup>69</sup> and Philemon Lloyd, the provincial justice whom Seymour added to the council for the day,<sup>70</sup> loyally rallied around Seymour against Smithson as they did against Macnemara.<sup>71</sup> They could not think that Seymour had done anything in the

least illegal or that could make him appear to be prejudiced against Macnemara. In bailing Macnemara Smithson had acted willfully, irregularly, and illegally. Since he had offered to justify his proceedings in writing, however, the council resolved that he be directed to do that “with the first convenient Speed.” He would be notified that the council would meet next on Tuesday, 23 March,<sup>72</sup> more than a month away.

On 23 March 1707/8 the council met as scheduled,<sup>73</sup> and the next day it discovered that Smithson had not written to explain his bailing of Macnemara. The council then read into the record the letter by which Bladen, the clerk of the council, had notified Smithson that the council had unanimously resolved that his proceedings in the Macnemara case had been irregular and illegal and that Seymour expected him “by the first Conveniency to Transmitt [to] him in writing” what had to say to vindicate himself.

Seymour informed the council that he could not but resent Smithson’s “refusing and delaying to Offer the reasonable Satisfaction” that the council had required either in writing or in person after the council’s long and patient expectation. Although Smithson might have been ailing during these months,<sup>74</sup> Seymour was careful to point out that he had been in no way prevented from providing the satisfaction. His failure was disrespectful not only to Seymour but also to members of the council.

When Seymour asked the members of his council for advice about Smithson, they recommended that he remove Smithson from his position as chief justice of the provincial court not only for his misbehavior in his office but also for his willful and unmannerly contempt in wholly neglecting and refusing to explain his proceedings. The members of the council believed that Smithson should not be restored to his position until he gave Seymour and his council the satisfaction they had asked for.<sup>75</sup>

Seymour did remove Smithson from the provincial court, promoted William

Holland to the position of chief justice,<sup>76</sup> and appointed Kenelm Cheseldyn as the fourth provincial justice.<sup>77</sup> Later Smithson must have recovered his reputation, since sometime before the provincial court met on 8 April 1712 Edward Lloyd as president of the council after Seymour's death commissioned him as a provincial justice, though Holland remained chief justice.<sup>78</sup> At the courts for October of 1712 and April of 1713 Smithson was the ranking justice.<sup>79</sup>

After that Smithson sat no more.<sup>80</sup> By 5 November 1713 he was describing himself as "very aged and crazy,"<sup>81</sup> and by 3 July 1714 he was dead.<sup>82</sup>

## *Chapter 4*

### *Not-So-Loving Spouses, 1707-1708*

<sup>1</sup> Ronald Hoffman, “‘Marylando-Hibernus’: Charles Carroll the Settler, 1660-1720,” *The William and Mary Quarterly*, Third Series, XLV, No. 2 (April 1988), pp. 207-236; Ronald Hoffman, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500-1782* (Chapel Hill: The University of North Carolina Press, 2000), Chapter 2, “Marylando-Hibernus.”

<sup>2</sup> Anne Arundel County Court Judgment Record, Liber G, p. 320.

<sup>3</sup> Margaret Carroll was the daughter of Charles Carroll’s brother Anthony. Hoffman, *Princes of Ireland, Planters of Maryland*, Appendix 6, Chart B.

<sup>4</sup> Council of Maryland to the Board of Trade, 18 July 1712, The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127 (photocopy in Library of Congress).

<sup>5</sup> Hoffman, *Princes of Ireland, Planters of Maryland*, Appendix 6, Chart B; Donnell M. Owings, *His Lordship’s Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 138.

Michael Macnemara was clerk of the lower house from 4 October 1728 until 4 June 1744, clerk of the Paper Currency Office from April of 1734 or earlier until sometime before 23 April 1739, surveyor and searcher of Annapolis from just before 3 August 1734 until 30 September 1746, riding surveyor of Wicomico and Monie

from 30 September 1746 until about December of 1761, clerk of the Prerogative Office from 21 September 1752 until November of 1760, and clerk of the lower house again from 4 October 1763 until 6 December 1766. He died in debtor's prison on 4 November 1767. Owings, *His Lordship's Patronage*, pp. 56, 138, 139, 144, 145, 165, 183, 185.

The job of the riding surveyor was "to patrole [*sic*] remote areas in quest of smugglers." *Ibid.*, p. 97.

<sup>6</sup> The records of the dispute over separate maintenance for Margaret Macnemara are more than usually confusing. The record in the Provincial Court Judgment Record appears to be incomplete, is partly eaten away, and in some places is impossible to read, while the record in the Chancery Record is not continuous and is very messy: the reader has to jump from page to page.

<sup>7</sup> Samuel Young was the sixth-ranking of the thirteen justices of the provincial court and the lowest-ranking quorum justice. Provincial Court Judgment Record, Liber T. B., No. 2, pp. 65-67.

<sup>8</sup> C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), p. 179.

On 9 July 1698 Gerrard Sly did have to give bond of four thousand pounds sterling for his alleged reflections on Governor Francis Nicholson (*Md. Arch.*, XXIII, 448-450), and two days later he had to give an additional bond of one thousand pounds sterling to guarantee his appearance at the next provincial court and his good behavior in the meantime. *Ibid.*, p. 455. On 27 August 1698 Phillip Clarke had to give bond of one thousand pounds to guarantee his appearance at the next provincial court and his good behavior in the meantime after he was accused with John Coode, Robert Mason, and Gerrard Sly of trying "to raise a disturbance in the Province even

tending to actual Rebellion.” *Ibid.*, pp. 504-505. On the twenty-ninth Nicholson and his council ordered the sheriff of Anne Arundel County, Richard Beard (*Md. Arch.*, XXII, 412; XXIII, 173, 330, 447), to arrest Robert Mason and keep him in his custody until he provided a similar bond. *Ibid.*, XXIII, 506-509.

All of these bonds, however, relate to the fear of an insurrection, much more serious than a dispute between spouses. It appears clear that Macnemara’s high bond resulted strictly from who he was.

<sup>9</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 353-354. If Macnemara’s first appearance before Young occurred on 19 August 1707, he would not have had to spend any time in jail. If it occurred before that date, however, he must have been in jail until the nineteenth. What seems most likely is that Macnemara would get the *habeas corpus* immediately after Young required the high bail and that therefore he did not have to spend any time in jail.

<sup>10</sup> See Chapter 3, “Early Troubles, 1703-1710,” at Notes 44-52, 57.

<sup>11</sup> Owings, *His Lordship’s Patronage*, p. 141.

<sup>12</sup> The record here does not include the statuses of Joseph Hill, Andrew Welsley, Joseph Howard, and Thomas Freeborne.

<sup>13</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 353-354.

<sup>14</sup> The provincial court for September of 1707 met on 30 September 1707 (*ibid.*, p. 233), but it appears that Macnemara gave the bond on 11 October. *Ibid.*, p. 353. The record is not easy to make out.

<sup>15</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXV, 223.

<sup>16</sup> I have not found that earlier petition that Margaret Macnemara mentioned, and therefore I do not know to whom it was directed.

<sup>17</sup> “Childring.” Chancery Record 2, p. 579.

<sup>18</sup> *Ibid.* Clayton Coleman Hall says that Macnemara “had turned [his wife] out of doors.” Clayton Coleman Hall, “Preface” to *Md. Arch.*, XXXIII, xii. Actually Margaret Macnemara had applied for separate maintenance.

<sup>19</sup> Probably Josiah Wilson, the sheriff of Anne Arundel County and the sergeant-at-arms of the chancery court, who appears in the record later.

<sup>20</sup> From the record:

. . . the Afd pet[it]ion being read to him [Macnemara] he was ordered to Answer thereunto. which he obstinately refusing to doe and Offering a plea Ore tenus to his Excys Jurisdiction of the Matter Contained in y<sup>e</sup> petition and pretending to support this his plea by the practice of the Spiritual Courts in England . . . .

Chancery Record 2, p. 580.

Thus Macnemara not only refused to answer Margaret Macnemara’s petition in writing but refused to answer it at all. Instead he pleaded orally that the chancery court had no jurisdiction.

<sup>21</sup> Since no witnesses appeared to support Margaret Macnemara’s petition, the testimonies that John Seymour mentioned must have been the earlier testimony of Margaret Macnemara before his council, which Seymour will soon mention, supplemented probably by rumors and gossip that he had heard outside the court.

“Testimonies” does not necessarily mean that Seymour was referring to more than one person. He could have been referring to Margaret Macnemara’s words and wounds.

<sup>22</sup> The record of Margaret Macnemara’s appearance before the upper house has not survived.

<sup>23</sup> One gown and petticoat, one dust gown, one old calico dust-gown, three



shifts, two “suits of head cloths,” one nightcap, one handkerchief, one apron, one pair of stockings, one pair of gloves, one side-saddle and saddle cloth, one fan and (illegible), and one gold ring belonging to her father(?).

<sup>24</sup> Whether Macnemara actually did appeal to the Archbishop of Canterbury has not appeared.

<sup>25</sup> Chancery Record 2, pp. 579-581.

<sup>26</sup> Though Freeman was register in chancery (Owings, *His Lordship's Patronage*, p. 141), when he signed the record of 13 and 16 October 1707 he signed it “John Freeman Clk Especially Appointed on this particular Occasion.” Chancery Record 2, p. 581.

<sup>27</sup> Chancery Record 2, pp. 581, 585.

<sup>28</sup> I deal with the concern over Thomas Smithson's bailing Thomas Macnemara below at Notes 52-67.

<sup>29</sup> Chancery Record 2, p. 584.

<sup>30</sup> That the chancery court was always open and that the chancery court did meet again before 8 February 1707/8 becomes apparent immediately below.

<sup>31</sup> The writ of liberate is not written out in the records of the chancery court. It was filed in the office — apparently the office of the clerk of the chancery court — “among Macnemara's papers.” Chancery Record 2, p. 585.

The writ of liberate was, among other things, “A writ issued to a gaoler for the delivery of a prisoner that had put in bail for his appearance.” Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 917.

<sup>32</sup> Chancery Record 2, p. 585.

<sup>33</sup> *Ibid.*, p. 583. At this time William Holland was a member of the council and the upper house as well as the second-ranking of the four provincial justices. Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 37, 38, 447; *Md. Arch.*, XXV, 226; Provincial Court Judgment Record, Liber P. L., No. 1, pp. 233, 234.

<sup>34</sup> 31 Charles II, c. 2, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), VIII, 432-439.

<sup>35</sup> Chancery Record 2, p. 583. The second attachment against Macnemara, like the writ of liberate, is not written out in the records of the chancery court but was “filed in the office.” *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> In the record of the council Philemon Lloyd is referred to simply as “M<sup>r</sup> Justice Lloyd.” *Md. Arch.*, XXV, 235. For Lloyd as a justice of the provincial court in February of 1707/8 see *ibid.*, p. 226; Provincial Court Judgment Record, Liber P. L., No. 1, p. 233; Liber P. L., No. 2, p. 23.

<sup>38</sup> The four members of his council with whom John Seymour met on 18 February 1707/8 in addition to Philemon Lloyd were Thomas Tench, Francis Jenkins, William Holland, and William Coursey. *Md. Arch.*, XXV, 235. William Holland, like Philemon Lloyd, was a justice of the provincial court. *Ibid.*, p. 226; Provincial Court Judgment Record, Liber P. L., No. 1, p. 233; Liber P. L., No. 2, p. 23.

<sup>39</sup> *Md. Arch.*, XXV, 237.

<sup>40</sup> Chancery Record 2, pp. 583-584.

<sup>41</sup> The third attachment against Macnemara, like the writ of liberate and the sec-

ond attachment, is not written out in the records of the chancery court but was filed. *Ibid.*, p. 584.

<sup>42</sup> *Md. Arch.*, XXV, 234-235.

<sup>43</sup> Chancery Record 2, pp. 584-585.

<sup>44</sup> Owings, *His Lordship's Patronage*, pp. 67, 69.

<sup>45</sup> The provincial court would open on 1 April 1708. Provincial Court Judgment Record, Liber P. L., No. 2, p. 23.

<sup>46</sup> *Ibid.*, p. 25.

<sup>47</sup> I do not know whether a disbarred attorney could plead for himself — “in proper person.” Gouldesborough’s appearing here for Macnemara might suggest that he could not.

<sup>48</sup> Provincial Court Judgment Record, Liber P. L., No. 2, p. 169. Since at their court for September of 1707 the provincial justices had already ruled that the bond of four hundred pounds sterling was void, Gouldesborough could have argued that the larger bond was no longer in effect, but like a good lawyer he argued first on the technicality. If he did not succeed on the technicality he could argue substance later.

At this same court — July of 1708 — the justices quashed three other actions because in each case Bladen had used the *capias ad respondendum* instead of the *scire facias* to recover a bond. Robert Gouldesborough was the attorney in all three cases. *Ibid.*, pp. 180-181, 181-182, 183-184. Why Bladen used the *capias ad respondendum* instead of the *scire facias* in these cases does not appear. In September of 1706 he had used writs of *scire facias* to try to recover bonds. *Ibid.*, Liber P. L., No. 1, pp. 31, 32-33, 33-34.

Bladen did learn something from his experiences at this court. On 9 July 1708, three days after the court opened (*ibid.*, Liber P. L., No. 2, p. 129), he sued out five

writs of *scire facias* against four men who had been sureties for Richard Clarke, and he sued out a *scire facias* against a sixth surety, probably on that same day. Though he used the right writ, Bladen succeeded in only three of the cases, in each of which the defendant defaulted. *Ibid.*, pp. 521-522, 522-524, 524-526. In two cases the justices quashed the writs (*ibid.*, pp. 526-527, 528-529), and in the sixth case Henry Boteler, the sheriff of Prince George's County, returned the writ *nihil* (*ibid.*, p. 267), which means that he could not find the defendant. *Black's Law Dictionary* (6th edition), p. 1045. Wornell Hunt was the attorney in all of the cases that actually got to court.

<sup>49</sup> For the writ of *capias ad respondendum*, see Chapter 2, "Competence," Note 84.

<sup>50</sup> Though Goulesborough was right in arguing that Bladen should have used the *scire facias* to sue on a recognizance, the most common use of the *scire facias* was to summon a defendant to satisfy a judgment that he had not satisfied within a year and a day after the court issued the judgment in the first place.

For the writ of *scire facias*, see Chapter 2, "Competence," Note 89.

<sup>51</sup> Provincial Court Judgment Record, Liber P. L., No. 2, p. 241.

<sup>52</sup> *Md. Arch.*, XXV, 227.

<sup>53</sup> *Ibid.*, p. 228.

<sup>54</sup> *Webster's Third New International Dictionary of the English Language Unabridged* (1981). Emphasis in Webster.

<sup>55</sup> Those present in the council on 22 December 1707 were Thomas Tench, Edward Lloyd, and William Holland. *Md. Arch.*, XXV, 227.

<sup>56</sup> *Ibid.*, p. 228. Thomas Smithson's letter does not appear in the records of the council. These were the years during which William Bladen was the clerk of the

council (Owings, *His Lordship's Patronage*, p. 136), and Bladen was very cavalier about how he kept the records. On 19 May 1719 Governor John Hart told his council sitting as the upper house of the assembly that the proceedings of the council for thirteen months while Bladen was the clerk were missing. *Md. Arch.*, XXXIII, 313.

Bladen was clerk of the council from April of 1698 until October of 1716. Evan Jones served in his place from 27 September 1708 until November of 1708. Owings, *His Lordship's Patronage*, p. 136. Since the council discussed Smithson's letter of justification on 22 December 1707, Bladen was responsible for the records.

<sup>57</sup> *Md. Arch.*, XXV, 228-231 (Hunt), 231-233 (Bladen). The proviso that the Habeas Corpus Act of 1679 would not apply in civil cases is in Paragraph VIII of the act. 31 Charles II, c. 2, in Pickering, *The Statutes at Large*, VIII, 436.

<sup>58</sup> At the beginning of the session of the assembly that opened on 25 October 1709 the delegates ruled that Wornell Hunt was not eligible to sit in the lower house as a delegate from Annapolis because he had not lived in the province for three years before he was elected (*Md. Arch.*, XXVII, 414), as the law required. 1694, c. 1, *Md. Arch.*, XIX, 100-101; 1704, c. 93, *Md. Arch.*, XXVI, 429-430. Thus he could not have arrived in Maryland much before 25 October 1706, and therefore most of what he knew about the province must have been rumor and hearsay, after hearing which, as we are about to point out, Hunt considered himself "Credibly Informed."

<sup>59</sup> *Md. Arch.*, XXV, 230.

<sup>60</sup> *Ibid.*, p. 233.

<sup>61</sup> Joseph Keble, *Reports in the Court of King's Bench at Westminster, from the XII to the XXX Year of the Reign of Our Late Sovereign Lord King Charles II* (London: W. Rawlings, S. Roycroft, and M. Flesher, 1685).

Smithson had referred to "1 Keeble 83 and before & after." *Md. Arch.*, XXV,

231.

<sup>62</sup> *Ibid.*, p. 233. Such a cavalier attitude was characteristic of Bladen. See for example Text below at Notes 65-66.

<sup>63</sup> *Md. Arch.*, XXXV, 228.

<sup>64</sup> *Ibid.*, p. 232.

<sup>65</sup> *Ibid.*, p. 233.

<sup>66</sup> For Bladen's incompetence as attorney general, see Chapter 2, "Competence," at Notes 28-51, 57-62, 84-87; Chapter 9, "Harassment by Indictment, 1712-1719," after Note 79-83; Chapter 5, "Railroading, 1710-1713," at Notes 95-103. For his incompetence as attorney general, as clerk of the council and of the upper house, and as printer to the province as well as both his incompetence and his corruption as a contractor, see C. Ashley Ellefson, *William Bladen of Annapolis, 1673?-1718: "the most capable in all Respects" or "Blockhead Booby"?*, Volume 747 of the Archives of Maryland Online, at <http://www.aomol.net/000001/000747/html/index.html>.

<sup>67</sup> *Md. Arch.*, XXV, 233.

<sup>68</sup> *Ibid.*, pp. 234-235.

<sup>69</sup> For the four members of the council who were present on 18 February 1707/8, see Note 38 above.

<sup>70</sup> *Md. Arch.*, XXV, 235.

<sup>71</sup> See Text above at Note 65.

<sup>72</sup> *Md. Arch.*, XXV, 236-237.

<sup>73</sup> *Ibid.*, p. 237.

<sup>74</sup> When Governor Seymour and his council on 22 December 1707 ordered that Thomas Smithson attend the next meeting of the council, his health permitting, to explain why he had bailed Macnemara (*Md. Arch.*, XXV, 233), they must have been

saying that Smithson's health was not good. Smithson did attend the provincial court for September of 1707 (Provincial Court Judgment Record, Liber P. L., No 1, p. 233), but by the time the provincial court met again, in April of 1708 (*ibid.*, Liber P. L., No. 2, p. 23), Seymour had removed him from the provincial court and had made William Holland the chief justice. *Md. Arch.*, XXV, 251.

<sup>75</sup> *Ibid.*, pp. 239-240. Earlier Thomas Smithson was more appreciated. On Thursday, 7 September 1704, the lower house was informed that Colonel Thomas Smithson, who was a delegate from Talbot County, had arrived in Annapolis and resolved "that in gratefull remembrance of the many Eminent Services" that he had done for the province "the whole house with the Speaker . . . wait on him to his place in the house." *Ibid.*, XXVI, 109.

<sup>76</sup> William Holland might have been less than objective in the consideration of the Smithson's alleged improprieties. He was the second-ranking justice of the provincial court (Provincial Court Judgment Record, Liber P. L., No. 1, p. 233), and if Smithson was removed as chief justice he could logically expect to rise to that position, as in fact he did.

<sup>77</sup> *Ibid.*, Liber P. L., No. 2, pp. 23, 129, 252; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 486-487.

<sup>78</sup> Provincial Court Judgment Record, Liber T. P., No. 2, pp. 329-330.

<sup>79</sup> *Ibid.*, Liber T. P., No. 2, pp. 495, 576; Liber I. O., No. 1, p. 17.

<sup>80</sup> *Ibid.*, Liber I. O., No. 1, pp. 17, 173, 415; Liber V. D., No. 1, p. 41.

<sup>81</sup> *Md. Arch.*, XXIX, 299. An archaic meaning of "crazy" is "broken down in health: AILING, INFIRM, FRAIL." *Webster's Third New International Dictionary of the English Language Unabridged* (1981).

<sup>82</sup> *Md. Arch.*, XXIX, 386, 430, 434, 435. Thomas Smithson died in March of 1713/14. *Biographical Dictionary*, II, 754.

*Chapter 5*  
*Railroading, 1710-1713*

By 1710 Thomas Macnemara had caused colonial authority considerable concern, and when the provincial justices of Maryland thought that they had a chance to get rid of him for good they tried to make the most of it. For the death of Thomas Graham they did their unsuccessful best to get Macnemara hanged: twice they refused to accept the petit jury's verdict of chance-medley and sent it out to reconsider, and when the jurors remained adamant they illegally changed the verdict themselves to manslaughter and thus guaranteed that if they could not hang him he would at least have to plead benefit of clergy,<sup>1</sup> would suffer the pain of a brand on his hand,<sup>2</sup> and would never be able to plead benefit of clergy again.<sup>3</sup> Knowing his temper, they might have hoped that he would actually commit a capital crime later, and they could hang him then, as they had hanged Richard Clarke, another outsider, on a bill of attainder two years earlier.<sup>4</sup> Until that happy day, manslaughter would give the provincial justices an excuse to deprive Macnemara of his practice in the provincial court, while mere chance-medley would not. The council, ignoring a law of two years earlier by which the assembly provided that only justices could admit and suspend attorneys, extended the disbarment to the entire province.

On 8 May 1710 Macnemara and John Mitchell went out to Graham's sloop in



the Chesapeake Bay to serve writs in two actions of trespass on the case that Macnemara had brought against him.<sup>5</sup> Macnemara was acting for himself only because the sheriff, John Gresham Jr.,<sup>6</sup> refused to serve the writs.<sup>7</sup> When Macnemara tried to arrest Graham and take him ashore Graham resisted and tried to throw Macnemara overboard, and Macnemara, according to the indictment, shot him in the shoulder.

Macnemara had to give security of two hundred pounds sterling, with two sureties of one hundred pounds sterling each, to guarantee his appearance at the provincial court for July of 1710. James Carroll and Thomas Major, who would be one of the witnesses against Macnemara and Mitchell, became his sureties.<sup>8</sup> Apparently Mitchell, who was not directly involved in the fight, did not have to provide security for his appearance, but when Graham died on the twenty-fourth both he and Macnemara were jailed in chains.<sup>9</sup>

At the provincial court for July of 1710 the grand jury after hearing ten witnesses charged that on 8 May 1710 Thomas Macnemara and John Mitchell, two gentlemen from Annapolis, assaulted Thomas Graham, a Quaker merchant from Pennsylvania,<sup>10</sup> with “swords Daggers Gunns and Pistolls” on board the sloop *Sarah* in Anne Arundel County. Macnemara, the grand jurors alleged, with malice forethought shot Graham in the left shoulder with a horse-pistol worth five shillings sterling and “charged with powder and three small Leaden Bullets Comonly called High Swan Shott” and inflicted a wound one finger long, one finger wide, and five fingers deep<sup>11</sup> while Mitchell, also with premeditated malice, “was present abetting Comforting, procureing assisting and Maynteyning” Macnemara. Graham languished for sixteen days before he died on the twenty-fourth. Since Macnemara and Mitchell had allegedly acted with premeditated malice, the charge against both was murder.

When Macnemara and Mitchell appeared in the custody of John Gresham Jr.

they petitioned the justices that since they had been in the Anne Arundel County jail for about seven weeks the justices bring them to trial immediately and that since it was certain that at their trial some points of law would arise the justices assign them counsel to assist them in their defense. The justices denied their request for counsel but agreed that the two should have their trial immediately.<sup>12</sup> At some point in these proceedings the justices also discharged Macnemara's bond for his appearance.<sup>13</sup> Since he was in Gresham's custody, no further bond was necessary.

After Macnemara and Mitchell pleaded not guilty a petit jury found them not guilty of murder but guilty of homicide by chance-medley, which was the name given to the crime when the defendant had killed his victim in self-defense in a sudden affray<sup>14</sup> and which authority usually treated the same as misadventure,<sup>15</sup> the name given to the offense when the defendant had killed his victim by accident when he was engaged in a lawful act.<sup>16</sup> The justices were not satisfied with that verdict and sent the jury out again. The jurors returned with the same verdict; the justices sent them out once more; and the jurors once again insisted that Macnemara and Mitchell had killed Graham by chance-medley only.<sup>17</sup>

While in sending the petit jury out a second and then a third time the provincial justices had done nothing illegal,<sup>18</sup> in denying Macnemara and Mitchell counsel at their trial they were denying them one of their rights as Englishmen. When a point of law "proper to be debated" might arise in a trial the defendant was supposed to have counsel.<sup>19</sup> In requesting counsel Macnemara and Mitchell pointed out that in their trial some points of law might arise. Obviously a point of law — whether their crime was murder or manslaughter or chance-medley — did arise, and therefore the provincial justices should have allowed them counsel. As much as authority hated Macnemara, he and Mitchell could hardly have expected the provincial justices to

look out for their rights, though as judges, as the fiction of English procedure claimed, they were supposed to look out for the rights of defendants in criminal cases.<sup>20</sup>

After the petit jury twice refused to change its verdict from chance-medley to murder or manslaughter the justices gave up on that approach and turned the two men back over to Gresham until they were ready to proceed to judgment against them. When the next day they ordered Gresham to bring the two into court again and asked them why the court should not pass judgment against them, both defendants asked for time to produce pardons, which were supposed to be automatic in cases of chance-medley.<sup>21</sup>

The justices gave both Macnemara and Mitchell until the next provincial court or the next assizes for Anne Arundel County, whichever came first, to sue out their pardons. They required Macnemara to enter a bond of fifty pounds sterling, with two sureties of twenty-five pounds sterling each, to guarantee his appearance at the next provincial court or at the assizes and to guarantee his good behavior in the meantime. John Baptista Carberry, a gentleman from St. Mary's County, and Christopher Smithers, a tailor from Anne Arundel County, became his sureties.

The justices required Mitchell to give security of only ten pounds sterling, with no sureties, to guarantee his good behavior for three months from the end of the July court.<sup>22</sup>

Later Macnemara had to give security of two hundred pounds sterling, with two sureties of one hundred pounds sterling each, and Mitchell of fifty pounds sterling, with two sureties of twenty-five pounds sterling each, to guarantee their appearance at the provincial court for October of 1710. Charles Carroll and Cornelius White became sureties for both men.<sup>23</sup> The second bond did not supersede the first: Mac-

nemara and Mitchell appeared at the provincial court for October of 1710 under two bonds each.<sup>24</sup> Somebody must have decided that the smaller bonds were insufficient.

On 13 August 1710 an unidentified writer, writing to an unidentified correspondent, gave his view of what had happened in the death of Thomas Graham. Even though this writer had no affection for Macnemara — “if there had been justice done him he should have been hang’d” —, his evidence makes Graham’s death look more like chance-medley than either manslaughter or murder and therefore makes it appear that the petit jurors were not unreasonable when they stubbornly insisted that Macnemara and Mitchell were guilty only of the least serious crime.

With the cavalier approach to accuracy that was typical of Macnemara’s enemies, this writer noted that Macnemara had killed the master of a sloop and had the “honour to be in Irons” for the past four or five months with “his cousin Rudman.” He supposed that as a lawyer Macnemara had been employed “to gett a small quantity of money of one Graham,” who was a merchant from Philadelphia. Knowing that Graham was a stout fellow, Macnemara borrowed a pair of pistols from one Garrett. It was such a piddling business that the sheriff would have nothing to do with it, and therefore without an order from the sheriff Macnemara took Garrett’s boat to Graham’s sloop, which was anchored in the Bay.

Thus if the sheriff, John Gresham Jr., had been willing to do his job the incident might never have occurred, and Graham might have lived a longer life.

When Macnemara boarded the sloop, according to this writer, Graham asked “Do ye come Friends or Enemies?” When Macnemara and his companion, who must have been John Mitchell even though this writer calls him Rudman, responded that they were friends, Graham welcomed them.

With that, however, Macnemara told Graham that he was his prisoner and that he would take him ashore with him. Graham grabbed Macnemara to throw him overboard, and in the scuffle Macnemara shot Graham “under ye armpitt with a brace of balls.” When Graham fell he broke his arm, and all the while Macnemara was “laying him on with ye cock of ye pistoll”<sup>25</sup> and fractured Graham’s skull in several places. Graham “cryed, you have murder’d me.”

Either Macnemara’s enemy was exaggerating or had information that the grand jurors either did not have or did not consider essential, since while the grand jurors did charge Macnemara and Mitchell with assaulting Graham with “Swords Daggers Gunns and Pistolls” they said nothing about a broken arm or a fractured skull.<sup>26</sup> What evidence the witnesses had presented at the trial, however, we do not know.

Macnemara managed to get Graham ashore and to his own house,<sup>27</sup> where he sent for Dr. Moor and some others, but, this writer says incorrectly, Graham died the next morning. Continuing his inaccuracy, he says that Macnemara and Rudman were “imediately [*sic*] clapt into irons and try’d, but to no purpose,” since the petit jury brought in a verdict of chance-medley even though the crime was wilful murder. If the jurors had been honest fellows both men would have been hanged, but “This Country does no justice in ye world . . . .”

This writer believed that the absence of a governor was an important cause of the turmoil in Maryland.<sup>28</sup> Careless about the references of his pronouns, he says that the province quite stank “for want of a Governour to sett them to rights.” An unidentified “they” threatened to pull down all of the prisons if another unidentified “they” “putt anybody in prison for protested Bills.”<sup>29</sup> People were running away “daily with 2 or 3 families at a time in sloops with Negroes,” and all of them were going to North Carolina.<sup>30</sup>

Both Macnemara and Mitchell appeared at the provincial court for October of 1710, apparently on Tuesday the tenth, the first day of the court.<sup>31</sup> Because the justices were not advised of their judgment they continued the case to Saturday the fourteenth and released the two on their recognizances.

On Saturday morning the two men appeared again. When the justices asked Macnemara why they should not pass judgment against him he said nothing that they considered material. He had applied for a pardon, but the council, with Edward Lloyd sitting as president, had refused it.<sup>32</sup> Though Macnemara had been free on his recognizance, the justices, apparently determined to humiliate him while they had the chance, ordered John Gresham Jr. to keep him in irons in the county jail until they required his appearance. That afternoon the justices ordered Macnemara brought before them once again, and this time when they asked him what he had to say for himself he pleaded benefit of clergy.<sup>33</sup>

For chance-medley Macnemara would not have had to plead benefit of clergy, since, again, for chance-medley the pardon was supposed to be automatic.<sup>34</sup> The provincial justices, however, convinced or claiming to be convinced that Macnemara's friends and relatives had tampered with the jury<sup>35</sup> and determined that if they could not hang him they would at least force him to suffer the pain of a branding, concluded that while the jury had found the fact of the killing they themselves were the judges of the manner of the killing<sup>36</sup> and illegally changed the verdict against Macnemara from chance-medley to manslaughter.<sup>37</sup>

Somewhere along the line the provincial justices had discovered the case of John Vane Salisbury, from 1553, and even though it did not fit Macnemara's case they used it to justify their action. They appear, however, to have been uneasy about

it.

In their letter to the Board of Trade on 18 July 1712 William Holland, Thomas Smyth, and Robert Bradley, the three justices who sat at the provincial court for October of 1710, acknowledged that they were not “thorough paced Lawyers,” but they pointed out that in raising Macnemara’s crime from chance-medley to manslaughter they “had some reliance on the Case of John Vane Salisbury” in Plowden’s *Commentaries*, where after the jury found one of the defendants guilty of manslaughter the judges decided that while the jury found “the Matter Yet . . . they were Judges of the Manner” and therefore decided that John Vane Salisbury was guilty of murder, though “he did not afterwards suffer.”<sup>38</sup>

The three justices might well have been uneasy, since they had the case of John Vane Salisbury all wrong. Either they did not understand the case or were deliberately misleading the members of the Board of Trade and hoping that those men would be so busy that they would not take time to check it. The English judges did not change Salisbury’s crime from manslaughter to murder but concluded rather “that they might give judgment upon him to be hanged for the manslaughter.” They decided, however, to reprieve Salisbury “until the opinions of the other sages of the law were known. And therefore they did reprieve him.”<sup>39</sup>

Although in 1706 Parliament provided that a convicted defendant could claim benefit of his clergy even though he could not read,<sup>40</sup> the provincial justices were not willing to let Macnemara off so easily. They might not have known about the law of 1706, but it appears more likely that they did not believe that it applied to Maryland.<sup>41</sup> Of course that belief would have harmonized very nicely with their desire to give Macnemara the hardest possible time. Making Macnemara read would carry the

denigrating implication that in spite of his prominence as an attorney they were not sure that he was literate.

Yet Macnemara was no exception. In Maryland during the first two decades of the eighteenth century and even later there was considerable confusion and disagreement over just which English laws did apply there,<sup>42</sup> and all five of the other defendants who pleaded benefit of clergy in the provincial court from 1708 through April of 1713 did have to read before the justices granted them their clergy.<sup>43</sup>

In Macnemara's case the justices appointed Evan Jones of Annapolis ordinary especially for the occasion, and when Jones delivered the book to Macnemara probably nobody in the courtroom was surprised when Macnemara was able to "read as a Clarke." With that the justices ordered that he have an M branded on his left hand, and John Gresham Jr. immediately branded him in open court. After Macnemara paid his costs the court discharged him.

John Mitchell got off more lightly. When he appeared at the provincial court on Saturday, he like Macnemara said nothing material, but the justices granted him additional time to produce his pardon,<sup>44</sup> which he did receive.<sup>45</sup>

The provincial justices did not raise Mitchell's crime from chance-medley to manslaughter. Both the justices themselves and the members of the council in their letters to the Board of Trade on 18 July 1712 were writing only about Macnemara when they say that the provincial justices had decided that *he* was guilty of manslaughter. Both use exactly the same words.<sup>46</sup> Neither group says anything about the provincial justices' increasing the seriousness of Mitchell's crime.

The person who was responsible for someone's death forfeited all of his goods and chattels as well as the profits on his estate during his lifetime,<sup>47</sup> and on 28 July 1710, fifteen days after the petit jury found Macnemara and Mitchell guilty of



chance-medley and two and a half months before the two men appeared at the provincial court for October of 1710 for the disposition of the case against them, William Bladen sued out of the provincial court a writ of inquiry by which the provincial justices ordered John Gresham Jr. to summon a jury of twelve good and lawful men to determine what goods, chattels, lands, or tenements Macnemara and Mitchell had on 13 July 1710, which was the day on which the petit jury found them guilty of the homicide by chance-medley, to have the goods appraised,<sup>48</sup> and to take the goods, chattels, lands, and tenements into his own hands and keep them safe until the next provincial court, when he would report the appraisal to the provincial justices.

On 16 September 1710 Gresham performed the enquiry, and on 10 October, the day the next provincial court opened and four days before Macnemara was branded and Mitchell got additional time to produce his pardon, Gresham reported that the only estate that the jurors could discover of either of the two convicts was 880 pounds of tobacco that Steven Wright and Hezekiah Linthicomb owed Macnemara.<sup>49</sup> Apparently the justices did order the tobacco forfeited to the use of the queen: by English law the person who successfully pleaded his clergy forfeited the goods that he had at the time of his conviction but not his lands and tenements.<sup>50</sup> Even though Mitchell received a pardon, he would have forfeited his goods — if the sheriff's jury had found that he had any — unless the queen in the pardon explicitly excused that forfeiture.<sup>51</sup>

Since the only evidence we have in the death of Thomas Graham comes from Thomas Macnemara's enemies there is no way to be sure what actually happened on that sloop that day. Much as the members of the council wanted Macnemara hanged,

their description of the incident in their letter to the Board of Trade on 18 July 1712 fits chance-medley or manslaughter better than it fits murder. They admit that there was a scuffle,<sup>52</sup> and the writer of 13 August 1710 points out that Graham grabbed hold of Macnemara to toss him overboard.<sup>53</sup>

While the scuffle might make the crime appear to be manslaughter,<sup>54</sup> Graham's trying to throw Macnemara overboard might make it appear to be chance-medley. The difference between chance-medley and manslaughter was not always easy to judge.<sup>55</sup> Originally they were the same thing.<sup>56</sup> According to Sir William Blackstone, if "upon a sudden quarrel two persons" fought and one of them killed the other he was guilty of manslaughter,<sup>57</sup> while in order to be guilty only of chance-medley the defendant had to kill his antagonist strictly in self-defense. If the defendant was willingly fighting at the time of the death, his crime was manslaughter, while if the defendant had retreated as far as he could to avoid the fight and fought only to save his own life, it was chance-medley.<sup>58</sup>

At the time of Thomas Graham's death in 1710 the law of homicide — murder, manslaughter, chance-medley, and misadventure — was still evolving.<sup>59</sup> Whether a crime was one or another of those crimes depended on the degree of culpability of the defendant,<sup>60</sup> and that is what the petit jurors and the provincial justices disagreed on in Thomas Graham's death.

Macnemara, of course, might have argued that he did kill Graham strictly in self-defense, since according to the writer of 13 August 1710 Graham had tried to throw him overboard, while Bladen might have justified his charge of murder under the theory of malice implied,<sup>61</sup> since according to the members of the council in 1712 Macnemara had said several times that he would bring Graham ashore dead or alive.

In their letter to the Board of Trade on 18 July 1712, however, the members of

the council pointed out that the provincial justices had used a different argument. They had decided that Macnemara's malice was implied by "his acting Without any Deputation from the Sherriffe, and that in his own Case which made it malice implied in Law and so murther,"<sup>62</sup> which appears to be a much weaker argument than Macnemara's threats would have been.

Depending on the evidence that was presented at the trial, therefore, the provincial justices might have been right or wrong in concluding that Macnemara was guilty of manslaughter rather than only of chance-medley. Considering the nature of the crime, however, there might have been enough ambiguity about what actually did happen that the petit jurors were not being unreasonable when they concluded that Macnemara's killing Graham was only chance-medley. Their stubborn insistence that Macnemara was guilty only of chance-medley appears to have been as legitimate as the provincial justices' equally stubborn determination that he was guilty of manslaughter. If the petit jurors were being as lenient as they dared to be, the provincial justices were being as harsh as they dared to be.

Regardless of who was right and who was wrong about what crime Macnemara had committed, however, in changing the verdict of the petit jury the provincial justices were acting illegally.<sup>63</sup> Their justification that though "the Jury had Acquitted . . . [Macnemara] of the Murder which was the fact he was Indicted for" they "were Judges of the manner of the killing & thereon gave Judgment that he was guilty of Manslaughter"<sup>64</sup> does not hold up. It was in the special verdict that the petit jury found the facts and left the law to the judges,<sup>65</sup> but in this case the petit jury did not return a special verdict but rather found Macnemara and Mitchell guilty of a specific type of homicide.

And the supposed precedent that the justices used to support their action — the

case of John Vane Salisbury in Plowden's *Commentaries* — was irrelevant. In that case the justices did not change Salisbury's crime but rather sentenced him for the crime of which the petit jury found him guilty.

If the justices could decide that a defendant was guilty of a crime more serious than the crime of which the petit jurors found him guilty, the petit jury was all but useless, and the Englishman's great pride in the double-jury system — a pride that Englishmen in America shared — was based on a fiction.<sup>66</sup>

Beyond that, by increasing the seriousness of Macnemara's crime but not Mitchell's the provincial justices were exploiting their power to pick and choose among defendants. The grand jury had charged both men with murder, and the petit jurors had found both men guilty of chance-medley. In the view therefore not only of the attorney general, William Bladen, but also of at least twelve of the seventeen grand jurors who indicted them and of all twelve of the petit jurors who found them guilty only of chance-medley,<sup>67</sup> both men were guilty of the same crime. The provincial justices registered no objection to considering both men guilty of the same crime until after the petit jury twice refused to change its verdict from chance-medley to murder or manslaughter. Then, after fretting about Macnemara from July until October, they decided that the two men were not guilty of the same crime after all and that they could change Macnemara's crime to manslaughter themselves.

The provincial justices might have tried to justify their distinction between Macnemara and Mitchell by pointing out that Mitchell had been charged only with being present and "abetting Comforting procuring assisting and Maynteyning" Macnemara, while Macnemara was the one who was charged with actually shooting Graham. But still the grand jury had charged both men with murder, and the petit jury had found both guilty of chance-medley.

Far from trying to temper the harshness of the law, in Macnemara's case the justices were doing everything they dared, and more than was legal, to make it harsher.

The provincial justices' raising Macnemara's conviction from chance-medley to manslaughter, "joined with . . . [his] many former Crimes and Misdemeanours," allowed them to deprive him of his practice in the provincial court,<sup>68</sup> and that conviction together with "the multitude of his former offences" gave the council an excuse, in spite of the compromise of 1708 by which the justices were to have the power to admit and suspend attorneys,<sup>69</sup> to extend the disbarment to the entire province.<sup>70</sup> For the second time, Macnemara was deprived of his practice in Maryland.<sup>71</sup>

On 30 October 1710 Macnemara petitioned the lower house, but the delegates rejected his petition.<sup>72</sup> Since the petition is not included in the records, there is no way to be sure what it was about. But since the delegates referred it to the Committee of Aggrievances, which dealt with the courts later and probably did at this time also,<sup>73</sup> it appears possible that it was a petition for reinstatement in the practice of law in the province.

By the time the lower house rejected Macnemara's petition he had stirred up the indignation of the delegates by bringing an action in the Anne Arundel County court against Thomas Edmondson, a servant of the delegates from Talbot County, and having him arrested on a *capias ad respondendum*. On 30 October 1710, the same day on which they rejected Macnemara's petition, the delegates protested the arrest as a breach of the privileges of the House and ordered the sheriff, John Gresham Jr., to appear before the House the next morning.<sup>74</sup>

When Gresham appeared, the Speaker, Robert Bradley,<sup>75</sup> who was one of the three justices of the provincial court who seventeen days earlier decided that Macnemara was guilty of manslaughter rather than only of chance-medley and ordered him branded in the hand,<sup>76</sup> “acquainted him with the Order of the House relating to Edmondson” and ordered Gresham immediately to discharge Edmondson “without taking any Fees or Reward” for the arrest. Gresham promised to carry out the order.<sup>77</sup>

Gresham returned the *capias ad respondendum* against Edmondson to the Anne Arundel County court for November of 1710 endorsed *cepi*, but the action of Thomas Macnemara against Thomas Edmondson “was abated the Defendant being an Attendant upon Talbott County Burgeses [*sic*].”<sup>78</sup>

At the Anne Arundel County court for November of 1710 Macnemara’s troubles continued. There the justices ruled that because in the provincial court Macnemara had been convicted of chance-medley he could no longer practice as an attorney in their court.<sup>79</sup> In an order that sounds almost as though they were inviting him to leave the province, the justices also required him to give bond of twenty pounds sterling, with one surety of ten pounds, to guarantee his good behavior toward her Majesty as well as toward “all other the good people” of the province during his stay there or until court met in March of 1710/11. Christopher Smithers, the tailor from Anne Arundel County, again became his surety.<sup>80</sup>

Why Macnemara had to enter this bond does not appear, but this might have been the court at which, as the members of the council charged in their letter to the Board of Trade on 18 July 1712, Macnemara threatened John Dodd, an inn-keeper in Annapolis, and his wife and abused the sheriff of Anne Arundel County “in the face of the County Court.”<sup>81</sup> John Dodd was in court in November of 1710, when the

justices approved his application to keep an ordinary in Annapolis,<sup>82</sup> and at that time Macnemara did have a grievance against John Gresham Jr., who by refusing to serve Macnemara's writs on Thomas Graham had helped to create the circumstances that led to Graham's death and Macnemara's branding.

Later at this court the justices quintupled Macnemara's bond. He appeared in Gresham's custody and, in another order that makes it appear that they were inviting him to leave the province, the justices directed that since he forfeited his earlier recognizance he enter a new bond, this one of one hundred pounds sterling with two sureties of fifty pounds each, to guarantee his appearance at the county court for March of 1710/11, if he should stay in the province that long, and to guarantee his good behavior in the meantime. This time Matthew Beard, whose ear Macnemara at the provincial court for May of 1704 was acquitted of biting off,<sup>83</sup> and John Navarre, whom at the provincial court for April of 1715 Macnemara would be indicted for assaulting in what might have been a brawl in Navarre's inn in Annapolis,<sup>84</sup> became Macnemara's sureties for fifty pounds sterling each.<sup>85</sup>

While the record does not state what Macnemara did to forfeit his earlier bond, this might have been the occasion to which the members of the council referred in their letter of 18 July 1712 to the Board of Trade when they accused Macnemara of assaulting Richard Rolke and almost gouging out his eye.<sup>86</sup>

Though neither the record of the Anne Arundel County court nor the letter of the members of the council to the Board of Trade is clear, what might have happened is that at the Anne Arundel County court for November of 1710 Macnemara allegedly threatened John Dodd and his wife and abused the sheriff; the justices put him under the bond of twenty pounds sterling, with Christopher Smithers as his surety of ten pounds, to guarantee his good behavior during his stay in the province or until the

meeting of the Anne Arundel County court for March of 1710/11; he forfeited that bond by allegedly assaulting Richard Rolke; and the justices then put him under the bond of one hundred pounds sterling, with Matthew Beard and John Navarre as his sureties of fifty pounds each, again to guarantee his behavior until the Anne Arundel County court for March of 1710/11 if he stayed in the province that long.<sup>87</sup>

Macnemara was never prosecuted for his allegedly threatening John Dodd and his wife, or his alleged insult of the sheriff, or his alleged assault on Richard Rolke, however, and the only evidence that the incidents actually occurred comes from the letter of 18 July 1712 from the council to the Board of Trade.<sup>88</sup>

Instead of appearing at the Anne Arundel County court for March of 1710/11, sometime before that court met Macnemara went to England to protest his treatment in Maryland even though a warrant was out for his arrest for allegedly attempting to bugger the fifteen-year-old Benjamin Allen in William Taylard's kitchen loft on 22 December 1710.<sup>89</sup> Soon after arriving in England he registered in Gray's Inn.<sup>90</sup>

If Macnemara was going to protest in England, it became necessary for his enemies to get their side of the story into the hopper, too. In a letter dated 4 April 1711 an unidentified writer — apparently the same person who wrote the letter of 13 August 1710<sup>91</sup> — used the killing of Thomas Graham and the alleged attempted buggering of Benjamin Allen to illustrate the deplorable conditions in the province. He was sorry, he told an unidentified person — possibly the same person he wrote to on 13 August 1710 — that there was no governor in Maryland “to putt some life & courage into a drooping people.” The “Villain Macknemara” had privately got away from Maryland into Virginia, where he took a small Scottish vessel to Scotland. Probably he would appear in London among the merchants, the writer warned, and possibly



he would try to become acquainted with the governor.<sup>92</sup> Therefore this writer would give his correspondent “a true relation of his villanies & barbarities.”

After describing the killing of Thomas Graham as he had described it in his letter of 13 August 1710, this writer pointed out that Macnemara had been arraigned for murder, but the “Roman Catholicks all his Bosom ffriends pack’t a jury” and found him guilty only of manslaughter, for which he was branded in the hand. “Mr. C.,” who was a noted Roman Catholic, was “much his ffriend in having him acquitted of ye murther.” “Mr. C.,” apparently, was Charles Carroll.

Clearly this writer was no more concerned about accuracy than the provincial justices were when they misrepresented the case of John Vane Salisbury. The petit jury had found Macnemara guilty only of chance-medley: it was the justices who changed the crime to manslaughter. And Macnemara was not burned in the hand for the manslaughter but rather as a result of his pleading benefit of clergy.

Macnemara, according to this writer, stayed in Maryland until December of 1710, when contrary to the order of nature, “he Bugger’d W<sup>m</sup> Taylard’s little Boy.” Thus not only did he have Macnemara guilty before he was ever indicted, but he had him guilty of actual buggery rather than only attempted buggery.<sup>93</sup> When the boy complained against Macnemara, a warrant was issued against him, but he “absconded for a few dayes, and afterwards went off incognito.” That, apparently, is when he escaped to Virginia and caught the small Scottish vessel for Scotland.<sup>94</sup>

Much as this writer might have liked to see Macnemara hang — for buggery if not for murder —, when the provincial court met six days after he wrote his letter<sup>95</sup> the grand jury indicted Macnemara only for *attempting* to bugger Benjamin Allen. At the provincial court for April of 1711 the grand jurors charged that in William Taylard’s kitchen loft in Annapolis on 22 December 1710 Macnemara, “the fear of

God before his Eyes not haveing, but Seduced by the Instigation of the devill with force and Armes” feloniously assaulted Allen, who was “a Ladd of not more than fifteen years old” and who was “in the peace of our . . . Lady the Queen,” and “with fists and staves” beat, wounded, and evilly treated Allen and then

forceably and ag<sup>t</sup> the order of nature did attempt and Endeav-  
[or] . . . with the said Benjamin to have Venerall [*sic*]  
Practice, and to Committ and perpetrate the most Vile and  
destestable [*sic*] Sinn of Sodomy and the Same Benj<sup>a</sup> to  
Bugger and Carnally and Sodomitically to know & other  
Harmes to him did to the great displeasure of Almighty God  
and ag<sup>t</sup> her maj<sup>ty</sup>s Peace & the forme of the Statute in that  
Case provided & published.<sup>96</sup>

Since Macnemara had gone to England, the provincial justices could do nothing on the indictment for fifteen months. By 3 June 1712 he was back,<sup>97</sup> and at the provincial court for July of 1712 he appeared under bond of two hundred pounds sterling, with James Carroll, a gentleman from Anne Arundel County, as his surety of one hundred pounds sterling, to answer to the indictment for the attempted buggery.

Macnemara asked that he be tried immediately, but the justices ruled that since the attorney general, William Bladen, had to attend the council as clerk and since the July court was not a jury court Macnemara give a new bond of one hundred pounds sterling with two sureties of fifty pounds sterling each to guarantee his appearance to answer to the indictment at the next court, to guarantee that he would “Stand and abide” the judgment of the court, and to guarantee his good behavior in the meantime. Macnemara did give the bond, with James Carroll and Anthony Ivy, a gentleman from Queen Anne’s County, as his sureties.<sup>98</sup>

By the time the provincial court on 7 October 1712<sup>99</sup> Bladen had discovered that in the indictment against Macnemara he had made two errors. First, he alleged

that Macnemara had acted feloniously, but attempted buggery was not a felony but only a misdemeanor.<sup>100</sup> Second, he alleged that Macnemara had acted against “the forme of the Statute in that Case provided & published,” but there was no written law against attempted buggery. Attempted buggery was punished under the common law.<sup>101</sup>

After Bladen himself informed the court of his errors the justices ordered that he proceed no further on that indictment but prepare a new one. They also discharged Macnemara from his bond, since he had made his appearance as required.”<sup>102</sup>

Bladen corrected his errors, and the grand jury returned a new indictment in which it made the same charges against Macnemara as the earlier grand jury had made. The justices required Macnemara, who was already in court, to give another bond of one hundred pounds sterling, with two sureties of fifty pounds sterling each, to guarantee his appearance from day to day, to “stand & abide” by the judgment of the court, and to behave himself in the meantime. Daniel Dulany and James Lewis became his sureties.

Later, on a day that the record does not specify, Macnemara pleaded not guilty and asked for a trial by jury, but then, in what might have been an early example of a plea-bargain, he changed his mind, pleaded guilty to the charge of assaulting Allen but maintained his plea of not guilty to the charge of attempting to bugger him, and placed himself at the mercy of the court. The justices fined him fifteen hundred pounds of tobacco for the assault, dismissed the charge of attempted buggery, and discharged his recognizance.<sup>103</sup>

Full of contempt for Macnemara,<sup>104</sup> the provincial justices were not likely to dismiss the charge of attempted buggery out of any personal doubts about his guilt. More likely they were afraid that they would not be able to get a conviction for

attempted buggery and therefore had better be satisfied with Macnemara's pleading guilty to the lesser charge. Twenty-seven months earlier, after all, they had had no luck in getting the petit jury to find Macnemara guilty of anything more serious than chance-medley when they were convinced — or pretended to be convinced — that he was guilty of murder in the death of Thomas Graham.

Sometime before 6 March 1710/11 Macnemara sued out a writ of error on the provincial justices' changing the petit jurors' verdict in the death of Thomas Graham from chance-medley to manslaughter. On that day Thomas Bordley as his attorney offered to prosecute that writ in the court of appeals. Since Bordley could not show the justices his warrant for serving as Macnemara's attorney, however, and since Macnemara was outside the province, the court refused to allow Bordley to prosecute the writ. The court of appeals did grant Bordley's motion that Macnemara's bond to guarantee the prosecution of the writ of error be cancelled.<sup>105</sup>

Macnemara had gone to London, the members of the council point out in their long complaint to the Board of Trade on 18 July 1712, where he got himself entered in Gray's Inn and was admitted to the bar. He also petitioned the queen, who referred the petition to the Committee for Hearing Appeals from the Plantations, which was simply one of the many manifestations of the Privy Council sitting as a Committee of the Whole.<sup>106</sup>

Macnemara told the queen that in the provincial court of Maryland on 11 July 1710 he was indicted for murder and that after he pleaded not guilty the petit jury found him guilty only of chance-medley. His application for a pardon was denied, and he was forced to plead benefit of clergy and was branded in the hand. Soon after that, Macnemara continued, he was discharged from the practice of law in the courts

Maryland. Finally, he asked for relief.

After hearing the opinion of the attorney general<sup>107</sup> and having “fully considered” the case, the Committee for Hearing Appeals from the Plantations reported to the queen that since Macnemara had been found guilty only of homicide *per infortunium* — another term for chance-medley<sup>108</sup> — the justices should have discharged him rather than order him branded and that his crime was not sufficient reason to disbar him. They thought therefore that it would be proper for the queen to allow him by a writ of error to remove the proceedings on the indictment against him to the court of appeals in Maryland and to order the courts there to restore him to his practice as an attorney forthwith.

Whether the members of the Privy Council were aware that Macnemara had already sued out a writ of error in Maryland does not appear, but it is possible that Macnemara, trying to discredit the powers in Maryland as enthusiastically as they were trying to discredit him, either told the authorities in England or allowed them to believe that Edward Lloyd, who as president of the council in the absence of a governor was also acting as the chancellor of the province,<sup>109</sup> refused to grant him a writ of error.

The queen, of course, agreed with her Privy Council and ordered that Macnemara be granted a writ of error, that the courts of Maryland forthwith restore him to his practice as an attorney, and that the justices of the provincial court send the record of the indictment against Macnemara together with all proceedings concerning it to the queen in council so that Macnemara could receive full and speedy justice. The governor of Maryland as well as “the Judges justices and other officers” who were concerned were to take notice and to act accordingly.<sup>110</sup>

In obedience to the queen’s Order in Council the provincial justices did send

the transcript, which had arrived in England by 18 September 1711.<sup>111</sup> On 3 June 1712 Edward Lloyd, sitting in chancery with William Holland and Samuel Young, restored Macnemara to his practice in the chancery court but immediately suspended him again because of the indictment against him for assaulting and attempting to bugger Benjamin Allen before he went to England. Apparently there had not been time for him to be readmitted in any of the other courts. Macnemara would remain suspended until he acquitted himself of that crime.<sup>112</sup> Thus in the view of the provincial justices the prosecutor would not have to prove Macnemara guilty but rather Macnemara would have to prove himself innocent.

After Macnemara at the provincial court for October of 1712 pleaded guilty to assaulting Allen and the justices dismissed the charge of attempted buggery the provincial justices had no excuse to continue to deny him his practice, and either at that court or in April of 1713 they readmitted him to his practice there.<sup>113</sup> At the Anne Arundel and Prince George's County courts for November of 1712 the justices restored him to his practices there after he presented the queen's Order in Council,<sup>114</sup> and by 3 March 1712/13 he was practicing again in chancery and at the Baltimore County court.<sup>115</sup> Since the court records of Calvert County have not survived there is no way to know when he was sworn in again there.

Macnemara's unhappy experiences had made him no less willing to challenge authority. At the provincial court for April of 1713 the justices on Macnemara's motion as attorney for Thomas Cooke issued an attachment of contempt returnable to the next court against Edward Blay, the chief justice of Kent County, "for not Complying with the writt of Error to him tendred by the said Cooke," a dereliction to which Cooke had sworn.<sup>116</sup>

At this same court the justices on Macnemara's motion, this time as attorney

for William Cowly and his wife Mary, also ordered the issuing of a writ of attachment “to attach the body” of Robert Ungle, one of the justices of Talbot County,<sup>117</sup> to answer for his contempt in not complying with a writ of *certiorari* to remove the Cowlys’ case from the Talbot County court to the provincial court unless at this court Ungle could provide an adequate excuse for his failure. When Ungle did appear later with the record the justices discharged him from the attachment of contempt.<sup>118</sup>

The provincial court met on 14 April 1713,<sup>119</sup> and on 22 April Macnemara finally sued out of chancery a second writ of error to get the proceedings against him in the death of Thomas Graham before the court of appeals. The provincial justices allowed the writ of error and ordered the record of the action against Macnemara sent to the court of appeals.<sup>120</sup> They had no other choice, not only because the queen had ordered that Macnemara have his writ of error but also because courts were supposed to honor writs of error from superior courts as a matter of course.<sup>121</sup>

The only error that Macnemara alleged when the court of appeals heard the case on 12 May 1713 is that the justices of the provincial court had erred in giving judgment that he should be burned in the hand when they should have given judgment that he be discharged. In light of the recommendations of the Committee for Hearing Appeals from the Plantations and the queen’s Order in Council, Lloyd and the members of the council sitting as the court of appeals<sup>122</sup> had no other choice but to decide that the provincial justices had indeed erred and that the judgment against Macnemara be reversed, that he be restored to everything he had lost as a result of the judgment against him, and that he be discharged from any further prosecution in the case.<sup>123</sup>

The queen's order and the decision of the court of appeals did not save Macnemara from a brand on his left hand, but they did allow him to keep his tobacco and restored him to the practice of law. They might also have helped to increase his respectability: apparently at about this time he was elected to the common council of Annapolis and so began his progression to alderman, mayor, and then alderman again.<sup>124</sup>

Macnemara's enemies, however, were not finished with him. For most of the rest of his life William Bladen, who would die about a year before Macnemara,<sup>125</sup> would harass him with indictment after indictment;<sup>126</sup> on 10 October 1717 Governor John Hart suspended him from his practice in the court of chancery;<sup>127</sup> and in May of 1718 the assembly passed a law disabling him from practicing law in Maryland.<sup>128</sup> Baltimore and his guardian Lord Guilford disallowed that law,<sup>129</sup> but in June of 1719 the assembly defied Baltimore and Guilford and passed a law disbaring him again.<sup>130</sup> Before Baltimore and Guilford had a chance to disallow the second law, Macnemara was dead.<sup>131</sup>



## *Chapter 5*

### *Railroading, 1710-1713*

<sup>1</sup> Benefit of clergy was a system by which the person who could read could escape hanging and suffer only a brand on the brawn of his left thumb instead. Later the person did not have to read. Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4 vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), IV, 365-374\*.

<sup>2</sup> Thomas Macnemara had to plead benefit of clergy even though other defendants in eighteenth-century Maryland might be branded for manslaughter *without* pleading benefit of clergy. *Maryland Gazette*, 13, 27 January 1748, 20 April 1758; Provincial Court Judgment Record, Liber W. G., No. 1, pp. 545-546; Liber P. L., No. 7, pp. 301-303; Liber B. T., No. 3, pp. 269, 293-294; Liber D. D., No. 19, p. 3; Prince George's County Court Record, 1771-1773, pp. 312, 326-328.

Since sometimes a defendant was branded for manslaughter and at other times had to plead his clergy before he was branded, there must have been degrees of manslaughter. Probably the killing for which the defendant had to plead benefit of clergy for manslaughter before he was branded was considered more serious than the one in which he was branded without pleading his clergy, since once he pleaded his clergy he would never be able to plead it again and therefore presumably would die for his next capital crime unless he received a pardon.

Except for Pope Alvey in the mid-1660's, no instance has appeared in which a person who pleaded benefit of clergy was convicted of a second capital crime later. Alvey pleaded benefit of clergy in 1664 after he was convicted of manslaughter, then was sentenced to death in January of 1665/6 after he was convicted of stealing a cow. Governor Charles Calvert immediately reprieved Alvey, however, and on 7 July 1674 Calvert pardoned him. *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XLIX, 223, 230, 234, 235; LI, 121-129, 129-130.

For Pope Alvey, see C. Ashley Ellefson, "Seven Hangmen of Colonial Maryland," Volume 819 of the Archives of Maryland Online, at <http://www.aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000819/pdf/am819.pdf>, Chapter 3, "Pope Alvey."

Blackstone writes of "the lowest degree of" manslaughter (*Commentaries*, IV, 192), but he makes it appear that the defendant should *always* have to plead benefit of clergy in the case of manslaughter.

. . . the crime of manslaughter amounts to felony, but within the benefit of clergy; and the offender shall be burnt in the hand, and forfeit all his goods and chattels.

*Ibid.*, p. 193.

Other defendants in eighteenth-century Maryland were pardoned for manslaughter. *Md. Arch.*, XXV, 150; XXVII, 393-394; Provincial Court Judgment Record, Liber T. L., No. 3, p. 149; The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXI, No. 658.

<sup>3</sup> A layman was supposed to be able to plead benefit of clergy only once. Blackstone, *Commentaries*, IV, 367. J. M. Beattie, however, points out that

The rule forbidding clergy to second offenders was not being

applied with any consistency by Elizabeth's reign (if it ever had been), and it simply added another element to the discretionary authority of the judges.

J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986), p. 142. Beattie cites J. S. Cockburn, *Calendar of Assize Records, Home Circuit Indictments, Elizabeth I and James I: Introduction* (London: Her Majesty's Stationery Office, 1985), Chapter 9. In another place too J. S. Cockburn points out that a defendant might be granted clergy several times. J. S. Cockburn, *A History of English Assizes* (Cambridge: Cambridge University Press, 1972), pp. 125, 128-129. But defendants in England were also denied clergy because they had already pleaded it once. Beattie, *Crime and the Courts in England, 1660-1800*, pp. 475n., 543n.

<sup>4</sup> For Richard Clarke, see Chapter 3, "Early Troubles, 1703-1710," at Notes 54-66.

<sup>5</sup> Macnemara himself had sued Graham in two actions of trespass on the case for forty pounds sterling each, the writs for which John Gresham Jr. did not return to the provincial court for July of 1710. Provincial Court Judgment Record, Liber P. L., No. 3, p. 243; Council of Maryland to Board of Trade, 18 July 1712, The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127 (photocopy in Library of Congress).

When the sheriff did not return a writ to the court to which he was supposed to return it the justices had the choice of doing nothing further or ordering the writ returnable to the next court. C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), pp. 183-184.

<sup>6</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, pp. 114,

155.

<sup>7</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>8</sup> Provincial Court Judgment Record, Liber P. L., No. 3, p. 258. The record here does not note the status of James Carroll and Thomas Major.

<sup>9</sup> *Ibid.*, p. 257. The period between 8 May, when Macnemara shot Graham, and 11 July, when the court opened, was nine weeks and one day, and when Macnemara and Mitchell appeared at the provincial court for July of 1710 they said that they had been in jail for seven weeks. Therefore it appears that Macnemara must have given the bond after he wounded Graham and that when Graham died the bond was revoked and Macnemara was jailed.

Mitchell might not have had to give bond while Graham lived, since he was not the principal culprit, but when Graham died he was jailed with Macnemara.

The unidentified writer of 13 August 1710, whom I consider below after Note 24-30, is no help here. He says that Graham died the day after Macnemara shot him and that “Macknemarra and Rudman [Mitchell] were immediatly [*sic*] clapt into irons and try’d.” TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(a).

Since the time between the shooting and the opening of the court at which the trial was held was nine weeks and one day, and since when the court opened Macnemara and Mitchell had been in jail for seven weeks, the two could not have been jailed the day after Graham was shot but rather must have been jailed after he died about two weeks later. The time from 24 May, when Graham died, to 11 July, when the court opened, is exactly seven weeks.

According to Sir James Fitzjames Stephen, when a person was killed in a fight

the killer was “to be imprisoned till trial, no doubt because the presumption was that both parties were to blame in a quarrel.” Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (3 vols.; London: Macmillan and Co., 1883; reprinted New York: Burt Franklin, n. d.), III, 59.

<sup>10</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128.

<sup>11</sup> For two reasons it was necessary carefully to describe the weapon and the wounds it caused. First, if a person was going to be punished for the death of another, it was important that the wound of which the victim died was the one the defendant had inflicted on him. Second, any instrument that was the cause of a person’s death — or its equivalent value in money — was forfeited to the proprietor as deodand. In England in the eighteenth century the deodand was still important enough that Blackstone could consider it one of the sources of the king’s revenue. Blackstone, *Commentaries*, I, 300-302; IV, 307.

A horse-pistol was “a large pistol formerly carried by horsemen.” *Webster’s Third New International Dictionary of the English Language Unabridged* (1981).

<sup>12</sup> Provincial Court Judgment Record, Liber P. L., No. 3, p. 257. Ordinarily in criminal cases defendants did not have attorneys. In capital cases, however, defendants were supposed to have attorneys if “some point of law . . . [arose] proper to be debated.” Blackstone, *Commentaries*, IV, 355. Even in minor criminal cases defendants did sometimes have attorneys. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 158, 548 (Note 284).

<sup>13</sup> Provincial Court Judgment Record, Liber P. L., No. 3, p. 258.

<sup>14</sup> Blackstone, *Commentaries*, IV, 183-184; Henry Campbell Black, *Black’s*

*Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 231.

<sup>15</sup> Technically there was a difference between misadventure and chance-medley. Misadventure — homicide *per infortunium* — applied when a person engaging in a lawful act caused somebody's death, while chance-medley was supposed to apply when somebody killed someone else in self-defense in a sudden affray. Blackstone, *Commentaries*, IV, 182-184; J. M. Kaye, "The Early History of Murder and Manslaughter," *The Law Quarterly Review*, LXXXIII, Nos. 3, 4 (July, October 1967), p. 587.

Still in eighteenth-century England there was no effort to distinguish between misadventure and chance-medley. When in discussing Macnemara's killing of Thomas Graham the Lords of the Committee for Hearing Appeals from the Plantations used the phrases "Homicide by Chance medley" and "Homi[cide] per Infortunium" interchangeably (included in Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127) they were only following common practice. Kaye, "The Early History of Murder and Manslaughter," p. 389; Blackstone, *Commentaries*, IV, 184.

For misadventure in Maryland, see Provincial Court Judgment Record, Liber P. L., No. 1, pp. 153-155\*; Liber P. L., No. 4, pp. 279-280, 283-285, 292-293; *Md. Arch.*, IV, 24 (two cases); XXXI, 101; LI, 202-203\*, 210\*, 210-211\*, 321-324\*, 346-348\*; LVII, 353, 356-358; Chancery Records 1, pp. 166\*, 172\*. In the cases marked \* the defendants received pardons. The final resolutions of the other cases have not appeared.

On 20 March 1651/2 James Langworth was fined five hundred pounds of

tobacco and cask in a case of what appears to be misadventure, but the proprietor remitted the fine. *Md. Arch.*, X, 141-144. The presentment for accidental killing that appears in Provincial Court Judgment Record, Liber D. D., No. 9, p. 1, appears also to be a case of misadventure. The session was for September of 1765.

For chance-medley in Maryland, see Provincial Court Judgment Record, Liber T. G., pp. 22, 36-37\*; Liber V. D., No. 3, pp. 106, 198-199\*; Liber B. T., No. 5, pp. 805-806, 827, 827-828. In the cases marked \* the defendants received pardons. The final resolutions of the other cases do not appear.

For the complicated history of the law of homicide, see Stephen, *A History of the Criminal Law of England*, III, 1-107; Thomas A. Green, "The Jury and the English Law of Homicide, 1200-1600," *Michigan Law Review*, LXXIV (January 1976), pp. 413-499; Kaye, "The Early History of Murder and Manslaughter," pp. 365-395, 569-601; J. H. Baker, "Introduction" to J. H. Baker, ed., *The Reports of Sir John Spelman* (London: Selden Society, 1978), pp. 303-316.

<sup>16</sup> Blackstone, *Commentaries*, IV, 182-183; *Black's Law Dictionary* (6th edition), p. 998.

<sup>17</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16; Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i.

<sup>18</sup> William Hawkins, *A Treatise of the Pleas of the Crown* (2nd edition; 2 vols.; London: E. and R. Nutt and R. Gosling: Assigns of Edward Sayer, 1724-1726), II, 442.

<sup>19</sup> Blackstone, *Commentaries*, IV, 355-356.

<sup>20</sup> The judges were supposed to look out for the interests of the accused. Sir Edward Coke, *The Lord Coke His Speech and Charge* (London: Printed for Nathaniel Butter, 1607), cited in Thomas G. Barnes, "Thomas Lechford and the Earliest Lawyering in Massachusetts," in Daniel P. Coquillette, Robert J. Brink, and Catherine S. Menard, *Law in Colonial Massachusetts, 1630-1800* (Boston: The Colonial Society of Massachusetts, 1984), p. 9; Blackstone, *Commentaries*, IV, p. 324.

The judge might, however, refuse to counsel the defendant. Cockburn, *A History of English Assizes*, p. 120.

<sup>21</sup> Sir William Holdsworth, *A History of English Law* (17 vols.; London: Methuen & Co., 1903-1972), III, 257-258, 265, 295, 300; Sir Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I* (2nd edition; 2 vols.; Cambridge: Cambridge University Press, 1898; reprinted Cambridge: Cambridge University Press, 1968), II, 479-484; Stephen, *A History of the Criminal Law of England*, III, 76; Sir James Astry, *A General Charge to All Grand Juries* (London: Printed for W. Turner, 1703), p. 60; Blackstone, *Commentaries*, IV, 188; *Md. Arch.*, XVII, 37; LI, 321-324, 346-348; Provincial Court Judgment Record, Liber T. G., pp. 36-37; Liber P. L., No. 1, pp. 153-155; Liber V. D., No. 3, pp. 198-199; Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

The practice of automatically granting the pardon for chance-medley or misadventure went back to the Statutes of Gloucester 9 of 1278. 6 Edward I, c. 9, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), I, 124; Hawkins, *The Pleas of the Crown*, II, 380-381, 442.

Here Hawkins was following Sir Edward Coke. Stephen, *A History of the Criminal Law of England*, III, 37. Both Hawkins and Stephen cite Coke, *Second*



*Institute*, p. 316.

<sup>22</sup> Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231-234.

<sup>23</sup> *Ibid.*, pp. 398-400. The record does not include the status of Charles Carroll and Cornelius White, but Charles Carroll was a prominent Catholic and Cornelius White was an attorney. For Carroll, see Chapter 4, “Not-So-Loving Spouses, 1707-1708,” Note 1, and for White see Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), pp. 698-699.

<sup>24</sup> Provincial Court Judgment Record, Liber P. L., No. 3, p. 398.

<sup>25</sup> A cock in this use is “the hammer of a firearm.” *Webster’s New World Dictionary of the American Language* (College Edition, 1959).

<sup>26</sup> Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231-233.

<sup>27</sup> It is not clear whether “his own house” means Thomas Macnemara’s house or Thomas Graham’s. It appears more likely that it was Thomas Graham’s, even though Graham was from Philadelphia.

<sup>28</sup> A few minutes of browsing in the records of the assembly and of the council of Maryland from 1700 to 1720 (*Md. Arch.*, XXIV, XXV, XXVI, XXVII, XIX, XXX, XXXIII) will reveal the concern over Catholics, Indians, and crime.

In Chapter 1, “Character,” at Notes 14-56, I have already referred to some of the fear of Catholics and Indians as well as to the fear that New York was trying to take over the province. In Chapter 3, “Early Troubles, 1703-1710,” at Notes 54-66, I have referred to Richard Clarke, who was hanged on a bill of attainder on 10 April 1708.

<sup>29</sup> A bill of exchange was a writing by which the drawer promised to pay the payee a specific amount of money or tobacco. It was negotiable, and a protested bill was one that a creditor refused to accept from the payee. In such a case the payee

sent the bill to the drawer for payment, and if the drawer could not pay the amount of the bill he could be jailed. Clarence P. Gould, *Money and Transportation in Maryland, 1720-1765*, Johns Hopkins University Studies in Historical and Political Science, Series XXXIII, No. 1 (Baltimore: The Johns Hopkins Press, 1915), pp. 38-47; Paul R. Kelbaugh, "Tobacco Trade in Maryland, 1700-1725," *Maryland Historical Magazine*, XXVI, No. 1 (March 1931), p. 13.

<sup>30</sup> Unidentified writer in Maryland to unidentified correspondent in England, TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(a). In a letter of 10 June 1707 Governor John Seymour told the Council of Trade and Plantations that people were leaving Maryland for North Carolina in order to escape their debts. *Ibid.*, XXIII, No. 975 (pp. 471-472); *Md. Arch.*, XXV, 266. He repeated the claim in a letter of 23 June 1708. TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIII, No. 1570 (p. 759).

<sup>31</sup> Provincial Court Judgment Record, Liber P. L., No. 3, p. 383.

<sup>32</sup> Report of the Lords of the Committee for Hearing Appeals from the Plantations, included in Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

For Edward Lloyd as president of the council, see Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 120.

<sup>33</sup> Provincial Court Judgment Record, Liber P. L., No. 3, pp. 398-399.

<sup>34</sup> See again Note 21 above.

<sup>35</sup> Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, o. 16.i.

The members of the council alleged that Macnemara's friends had sounded out the panel of jurors returned to this court so that he would know which ones to challenge. Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; Chapter 6, "Dishonest Enemies, 1712," after Note 36.

<sup>36</sup> According to the myth of the eighteenth century the petit jury decided the facts in a case and the judges decided matters of law. Whenever a petit jury decided that a defendant was guilty of the crime with which the grand jury had charged him, however, and even more obviously when a petit jury found a defendant guilty of a crime other than the one with which the grand jury had charged him, it was deciding not only a matter of fact but also a matter of law. J. H. Baker, "Criminal Courts and Procedure at Common Law, 1550-1800," in J. S. Cockburn, ed., *Crime in England, 1550-1800* (Princeton: Princeton University Press, 1977), p. 23.

<sup>37</sup> The judges could not change the verdict of a jury. Hawkins, *The Pleas of the Crown*, II, 442; Beattie, *Crime and the Courts in England, 1660-1800*, pp. 408-409.

<sup>38</sup> Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i; Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.

<sup>39</sup> The case of John Vane Salisbury appears in Edmund Plowden, *The Commentaries, or Reports of Edmund Plowden, of the Middle-Temple, Esq; An Apprentice of the Common Law, containing, Divers Cases upon Matters of Law, Argued and Adjudged in the Several Reigns of King Edward VI. Queen Mary, King and Queen Philip and Mary, and Queen Elizabeth, Originally Written in French . . .* (Dublin:

Printed for H. Watts, 1792), (no page numbers), header Anno 1 Mary I.

John Vane Salisbury was one of four men charged with murder after the three other men conspired to ambush and kill one Doctor Ellis. Salisbury, the servant of one of the conspirators, was not involved in the conspiracy but joined in the battle to help his master. One of Ellis's servants was killed. The judges instructed the petit jurors to find Salisbury guilty only of manslaughter if they found that he had acted without malice aforethought, and the petit jury did do that. The judges sentenced him to hang anyway, but then they reprieved him.

And the opinion of the whole court was in a man clearly, that they might give judgment upon him to be hanged for the manslaughter . . . . But altho' the court held in a manner clearly, that they might give judgment upon him for the manslaughter, yet they thought it good, and it was agreed, to reprieve the prisoner, until the opinions of the other sages of the law were known. And therefore they did reprieve him.

*Ibid.*

The petit jury found the three conspirators guilty of murder, and they were hanged.

The case of John Vane Salisbury is included for another purpose in Kaye, "The Early History of Murder and Manslaughter," pp. 584-587. See also Green, "The Jury and the English Law of Homicide, 1200-1600," pp. 484-485.

<sup>40</sup> 5 Anne, c. 6, in Pickering, *The Statutes at Large*, XI, 194-196. Earlier, convicts did have to be able to read in order to receive benefit of clergy in Maryland. *Md. Arch.*, XLIX, 16, 235; LI, 214-215; LVII, 59-65; Provincial Court Judgment Record, Liber T. G., pp. 60, 104-105, 114-116; Liber D. S., No. C, pp. 15-16.

Before parliament passed 5 Anne, c. 6, the convicted defendant who claimed benefit of clergy had to recognize that the court might deny it if he could not read, as in the case of John Ouldton in 1692. Ouldton, however, received a pardon. Provin-

cial Court Judgments, Liber D. S., No. C, pp. 15-16; *Md. Arch.*, VIII, 314.

<sup>41</sup> Early in 1706 Governor John Seymour told the Council of Trade and Plantations that

I have yet further to trouble your Lordships in representing what seems to be the opinions of several of the Courts of Law here (and especially the Provincially, where all criminal matters are handled) that the several statutes of England, unless they expressly mention the Plantations, are not in force here . . . .

TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIII, No. 160 (p. 67); Colonial Office 5, Vol. 726, pp. 385-387.

<sup>42</sup> TNA (PRO), Colonial Office 5, Vol. 716, No. 16 (p. 46); Vol. 721, pp. 34-35; Vol. 726, pp. 319-320, 385-387; *Md. Arch.*, XXVI, 540-541, 597, 599, 600, 601; XXIX, 159-160, 365, 366, 367-368, 410, 411, 419, 421; XXXIV, 373-375, 394-395, 440-442, 469, 493, 602-603, 616, 661-679, 692-698; XXXV, 196-199, 199-200, 206, 212, 213, 282-284, 297-299, 299-300, 306, 308, 309-311, 324-325, 325, 334-335, 338-339, 339, 359-361, 361, 378, 378-379, 380, 394, 413-419, 421-422, 424-426; XXXVI, 18, 21, 36, 61-62, 67, 75, 105, 108, 150, 160, 163, 181-182, 184-187, 191, 192, 194, 195, 251, 441, 445; XXXVII, 13, 61-62, 78-79, 80, 81, 93, 191, 231-232, 378, 386, 427; XXXVIII, 429, 442, 445-446, 453-454; XXIX, 5; XL, 196, 202, 283, 284, 359, 381, 419, 420, 421, 442, 526, 577; XLII, 79, 111, 320-322.

<sup>43</sup> Provincial Court Judgment Record, Liber P. L., No. 3, pp. 384-386; Liber T. P., No. 2, pp. 379-384, 460-461, 585-586; Liber I. O., No. 1, pp. 121-124.

<sup>44</sup> Provincial Court Judgment Record, Liber P. L., No. 3, pp. 398-399.

<sup>45</sup> TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.i; TNA (PRO), Colonial Office 5, Vol. 717, p. 170. When John Mitchell produced his pardon has not appeared.

<sup>46</sup> Provincial justices: “wee [*sic*] gave Judgment that *he* was guilty of Manslaughter.” TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128. Members of the council: the justices “gave Judgment that *he* was guilty of man slaughter.” TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16. Emphasis added in each case.

<sup>47</sup> The person who killed someone by chance-medley or misadventure did forfeit his goods. Astry, *A General Charge to All Grand Juries*, p. 60; Holdsworth, *A History of English Law*, III, 257; Pollock and Maitland, *The History of English Law Before the Time of Edward I*, II, 481; Blackstone, *Commentaries*, II, 267-268; IV, 381-388; *Md. Arch.*, XXV, 119-120, 150; Provincial Court Judgment Record, Liber P. L., No. 4, pp. 283-285; TNA (PRO), *Calendar of State Papers: Colonial Series*, XX, No. 455.

<sup>48</sup> The record has “Extended and appraised.” “Extend” means simply to assess. *Webster’s New World Dictionary of the American Language* (College edition, 1959).

<sup>49</sup> Provincial Court Judgment Record, Liber P. L., No. 3, pp. 399-400. For the date on which the provincial court for October of 1710 opened, see *ibid.*, p. 383.

<sup>50</sup> Blackstone, *Commentaries*, IV, 373\*-374\*.

<sup>51</sup> Astry, *A General Charge to All Grand Juries*, p. 60; Stephen, *A History of the Criminal Law of England*, III, 40-41, 47, 49-50, 58, 59, 77.

<sup>52</sup> TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>53</sup> TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(a).

<sup>54</sup> Blackstone, *Commentaries*, IV, 184.

<sup>55</sup> *Ibid.*

<sup>56</sup> Kaye, “The Early History of Murder and Manslaughter,” pp. 365, 369, 370,

573, 574, 576, 582, 594, 599; Stephen, *A History of the Criminal Law of England*, III, 54, 59; Hawkins, *The Pleas of the Crown*, I, 76.

<sup>57</sup> Blackstone, *Commentaries*, IV, 191.

<sup>58</sup> *Ibid.*, pp. 184-185; Stephen, *A History of the Criminal Law of England*, III, 59-60.

<sup>59</sup> Stephen, *A History of the Criminal Law of England*, III, pp. 1-87. In the sixteenth and early seventeenth centuries there were only two types of culpable homicide — murder and manslaughter. Chance-medley was only another name for manslaughter. Kaye, “The Early History of Murder and Manslaughter,” pp. 365, 369, 370, 573, 574, 576, 582, 594, 599. Manslaughter, or chance-medley, was created only in the early sixteenth century, “and was the name given to an accidental killing which took place in the course or furtherance of an act of violence not directed at the party slain or any member of his company.” *Ibid.*, p. 369. In the middle of the sixteenth century manslaughter or chance-medley “came to mean a deliberate killing upon a sudden occasion.” *Ibid.*, pp. 369-370.

Later chance-medley came to be used to mean misadventure. *Ibid.*, p. 389.

The early failure to distinguish between manslaughter and misadventure was illustrated at the provincial court in December of 1668, when both the petit jury in a special verdict and the justices in their judgment used the phrase “manslaughter by misadventure” in the case in which Thomas Corker was tried for feloniously killing Richard Turner in Charles County on 24 October 1668 by shooting him with a gun worth ten shillings and causing various wounds of which Turner “immediately did dye.” Corker was cleared by proclamation after the jurors reported to the justices that he did not fly for it. *Md. Arch.*, LVII, 353, 356-358.

<sup>60</sup> Stephen, *A History of the Criminal Law of England*, III, p. 76.

<sup>61</sup> Blackstone, *Commentaries*, pp. 200-201; Stephen, *A History of the Criminal Law of England*, II, 121; III, 50-51, 74; Kaye, "The Early History of Murder and Manslaughter," pp. 591, 592, 600-601.

<sup>62</sup> TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>63</sup> See Notes 38-39 above.

<sup>64</sup> Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i.

<sup>65</sup> For special verdicts in criminal cases, see Blackstone, *Commentaries*, IV, 360-361. For the special verdict in the civil case, see *ibid.*, III, 377-378.

<sup>66</sup> For the double-jury system, see C. Ashley Ellefson, "An Appeal of Murder in Maryland," *The South Atlantic Quarterly*, LXVII, No. 3 (Summer 1968), pp. 536-538.

<sup>67</sup> At least twelve grand jurors had to agree that there was enough evidence to justify holding a suspect for trial before they could return a true bill, and all twelve petit jurors had to agree that a defendant was guilty before they could find him guilty. Astry, *A General Charge to All Grand Juries*, pp. 4-5; Sir Edward Coke, *The Third Part of the Institutes of the Laws of England: Concerning High Treason, and Other Pleas of the Crown, and Criminal Causes* (London: W. Rawlins, 1680), pp. 30-31; Lord John Somers, *The Security of Englishmen's Lives, or the Trust, Power, and Duty of Grand Juries in England Explained* (London: Printed for T. Mitchell, 1681), pp. 8-9.

<sup>68</sup> Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i. When the provincial justices disbarred Macnemara does not



appear in the records of the provincial court for July or October of 1710.

<sup>69</sup> 1708, c. 8, *Md. Arch.*, XXVII, 360-362; Chapter 3, “Early Troubles, 1703-1710, at Notes 187-210.

<sup>70</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>71</sup> For Macnemara’s first disbarment, see Chapter 3, “Early Troubles, 1703-1710,” after Note 24-26, 44-52.

<sup>72</sup> *Md. Arch.*, XXVII, 532.

<sup>73</sup> It was not until 25 October 1722, however, that the lower house resolved that the Committee of Aggrievances should also be the Committee for Courts of Justice. *Md. Arch.*, XXXIV, 440-441.

<sup>74</sup> *Md. Arch.*, XXVII, 532.

<sup>75</sup> *Ibid.*, p. 517.

<sup>76</sup> Provincial Court Judgment Record, Liber P. L., No. 3, pp. 398-399.

<sup>77</sup> *Md. Arch.*, XXVII, 535-536.

<sup>78</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, p. 207. Later, from May of 1719 to February of 1721/2, when he died, Thomas Edmondson was a delegate to the lower house from Talbot County. Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 43, 302-303.

<sup>79</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, p. 201.

<sup>80</sup> *Ibid.*

<sup>81</sup> TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>82</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, p. 201.

<sup>83</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 266, 268-270. See also Chapter 3, “Early Troubles, 1703-1710,” at Notes 2-12.

<sup>84</sup> At the Anne Arundel County court for March of 1714/15 Macnemara would sue John Navarre, who by then was an inn-holder in Annapolis. Provincial Court Judgment Record, Liber V. D., No. 1, pp. 138-141, 177. For Macnemara and the Navarres, see Chapter 9, “Harassment by Indictment, 1712-1719,” after Note 31-51.

<sup>85</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, p. 204. The record here does not note the status of John Navarre and Matthew Beard.

<sup>86</sup> TNA (PRO), Colonial Office 5, Vol.720, pp. 123-127.

<sup>87</sup> This explanation would make sense out of what the members of the council reported to the Board of Trade in their letter of 18 July 1712. They say that “in some small time after” Macnemara was branded for the manslaughter in the death of Thomas Graham and disbarred he threatened Dodd and his wife and abused the sheriff of Anne Arundel County “in the face of the County Court” and

was bound to his Good Behaviour and the peace, which in very few Days he broke by assaulting Richard Rolke and beating him very much almost scooping out his Eyes and that without provocation.

TNA (PRO), Colonial Office 5, Vol.720, pp. 123-127.

<sup>88</sup> I have not found any other reference to Macnemara’s threatening John Dodd and his wife, and there is no such incident listed among the entries in the card index of Anne Arundel County Court Judgment Record at the State Archives. Box for DEM-DOR.

Nor have I found any other reference to Macnemara’s allegedly abusing the sheriff “in the face of the County Court” or to his allegedly beating Richard Rolke. In the card index of the Anne Arundel County Court Judgment Record there is no

card for any Rolke. Box for RID-RYA.

<sup>89</sup> Unidentified writer in Maryland to unidentified correspondent in England, 4 April 1711, TNA (PRO), Colonial Office 5, Vol. 720, No. 8(ii), and TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(b); Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127, and TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.

Macnemara left for England sometime between 22 December 1710, the date on which he was supposed to have attempted to bugger Benjamin Allen in William Taylard's kitchen loft (Provincial Court Judgment Record, Liber T. P., No. 2, pp. 586-587, 587-588), and 6 March 1710/11, the date on which the court of appeals refused to proceed on his writ of error because he was out of the province. Carroll T. Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729* (Washington: The American Historical Association, 1933), pp. 137-138. He was back by 3 June 1712, when he appeared in the chancery court to present the queen's Order in Council directing that he be restored to his practice of law in the province. Chancery Record 2, p. 833.

<sup>90</sup> Macnemara registered in Gray's Inn on 17 April 1711. Joseph Foster, *The Register of Admissions to Gray's Inn, 1521-1889, Together with the Register of Marriages in Gay's Inn Chapel, 1695-1754* (London: The Hansard Publishing Union, Limited), 1889), p. 358.

<sup>91</sup> There appears to be a good chance that the writer of the letter of 4 April 1711 was one of the justices of the provincial court or a member of the council.

<sup>92</sup> This is the period during which Edward Lloyd as president of the council was serving as the chief executive officer after the death of John Seymour on 30 July

1709 and before the arrival of John Hart on 29 May 1714. Owings, *His Lordship's Patronage*, p. 120.

<sup>93</sup> The members of the council in their letter to the Board of Trade on 18 July 1712 were somewhat more honest. They had Macnemara guilty of buggery *or* attempted buggery. TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127. By the time they were writing, though, Macnemara had been indicted only for *attempted* buggery.

<sup>94</sup> TNA (PRO), Colonial Office 5, Vol. 720, No. 8(ii); TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(b).

<sup>95</sup> The provincial court met on 10 April 1711. Provincial Court Judgment Record, Liber T. P., No. 2, p. 1.

<sup>96</sup> *Ibid.*, pp. 2, 586-587. We know that this is the indictment that the grand jury returned at the provincial court for April of 1711 because the record of that court lists an indictment of Macnemara and because William Ringold was the foreman of the grand jury at that court and of the grand jury that indicted Macnemara. *Ibid.*, pp. 2, 586-587. He was not the foreman of any other grand jury between April of 1711 and October of 1712. *Ibid.*, pp. 2, 107, 192, 329, 495ff., 576.

<sup>97</sup> Chancery Record 2, p. 833. See also Note 89 above.

<sup>98</sup> Provincial Court Judgment Record, Liber T. P., No. 2, p. 495. The session of the provincial court for July sometimes was not a jury court. Provincial Court Judgment Record, Liber T. P., No. 2, pp. 495-572. (July 1712); Liber I. O., No. 1, pp. 173-415 (July 1713); Liber V. D., No. 1, pp. 203-382 (July 1714); Liber V. D., No. 2, pp. 63-122 (July 1716).

<sup>99</sup> Provincial Court Judgment Record, Liber T. P., No. 2, p. 576.

<sup>100</sup> Rictor Norton, *Mother Clap's Molly House: The Gay Subculture in Eng-*

*land, 1700-1830* (London: GMP Publishers Ltd., 1992), pp. 30, 58, 64, 81; Randolph Trumbach, "London's Sodomites: Homosexual Behavior and Western Culture in the Eighteenth Century," *Journal of Legal History*, XI, No. 1 (Fall 1977), p. 21; J. J. Tobias, *Crime and the Police in England, 1700-1900* (New York: St. Martin's Press, 1979), p. 151.

By the laws of England, on which the punishment for buggery was based, buggery was a capital crime. 25 Henry VIII, c. 6, in Pickering, *The Statutes at Large*, IV, 267-268; 2 Edward VI, c. 29, in *ibid.*, V, 325; 5 Elizabeth I, c. 17, in *ibid.*, VI, 208-209.

The statute 5 Elizabeth I, c. 17, revived 25 Henry VIII, c. 6.

In England buggery included both sodomy and bestiality. In the law of 1533 parliament refers to "the detestable and abominable vice of buggery committed with mankind or beast." 25 Henry VIII, c. 6, in Pickering, *The Statutes at Large*, IV, 267. This act was revived and made perpetual by 5 Elizabeth I, c. 17, in *ibid.*, VI, 208-209.

<sup>101</sup> The English laws that provided for the capital punishment of buggery do not mention attempted buggery (see previous Note), nor does William Hawkins or Sir William Blackstone. Hawkins, *The Pleas of the Crown*, I, 6; Blackstone, *Commentaries*, IV, 215-216.

<sup>102</sup> Provincial Court Judgment Record, Liber T. P., No. 2, pp. 586-587.

<sup>103</sup> *Ibid.*, pp. 576, 580, 587-588. In the record here the status of Daniel Dulany and James Lewis is not mentioned.

In their letter to the Board of Trade on 18 July 1712 the members of the council say that Macnemara broke into Taylard's kitchen at midnight "and crept up into [the] loft," where Richard Lock and Benjamin Allen, two of Taylard's servants, "were in Bedd together." TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127. The indict-

ment, however, says nothing about Macnemara's breaking into the kitchen.

<sup>104</sup> Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i; Chapter 6, "Dishonest Enemies, 1711-1712," at Notes 4-10.

<sup>105</sup> Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729*, pp. 137-138.

<sup>106</sup> Charles M. Andrews, *The Colonial Period of American History* (4 vols.; New Haven: Yale University Press, 1934-1938), IV, 314-315; Oliver Morton Dickerson, *American Colonial Government, 1696-1765: A Study of the British Board of Trade in Its Relation to the American Colonies, Political, Industrial, Administrative* (Cleveland: A. H. Clark Co., 1912; reprinted New York: Russell & Russell, Inc., 1962), pp. 84-91.

<sup>107</sup> The attorney general was Sir Edward Northey. Basil Williams, *The Whig Supremacy, 1714-1760* (2nd edition; revised by C. H. Stuart; Oxford: The Clarendon Press, 1962), p. 474.

<sup>108</sup> For the use of the terms misadventure and chance-medley interchangeably, see Note 15 above.

<sup>109</sup> Owings, *His Lordship's Patronage*, pp. 120, 124.

<sup>110</sup> Included in Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.

<sup>111</sup> TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.i. The transcript of the trial of Macnemara and Mitchell must have got to England in almost record time. Macnemara left Maryland sometime after he allegedly attempted to bugger Benjamin Allen on 22 December 1710. TNA (PRO), Colonial Office 5,

Vol. 720, No. 8(ii); TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(b); Provincial Court Judgment Record, Liber T. P., No. 2, pp. 586-587, 587-588; Note 89 above. Therefore he got to England, the Lords of the Committee for Hearing Appeals from the Plantations and the Privy Council heard his complaint, the order of the Privy Council got back to Maryland, and the transcript of the trial got to England by 18 September 1711 — all in eight-and-a-half months or less.

<sup>112</sup> Chancery Record 2, p. 833; Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.

<sup>113</sup> Provincial Court Judgment Record, Liber I. O., No. 1, p. 21.

<sup>114</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 3, p. 100; Prince George's County Court Record, Liber G, p. 261.

<sup>115</sup> Chancery Record 3, pp. 3, 7; Baltimore County Court Proceedings, Liber I. S., No. A, p. 349.

<sup>116</sup> Provincial Court Judgment Record, Liber I. O., No. 1, p. 21. I have found no further proceedings in the case against Edward Blay.

<sup>117</sup> By commissions of 21 April 1707 and 29 November 1707 Robert Ungle was the second-ranking justice of Talbot County. Talbot County Court Judgment Record, Liber R. R., No. 11, pp. 192-193, 193-194, 414-416.

<sup>118</sup> Provincial Court Judgment Record, Liber I. O., No. 1, p. 21. I have not found the record of this *certiorari*.

<sup>119</sup> *Ibid.*, p. 17.

<sup>120</sup> *Ibid.*, p. 165.

<sup>121</sup> *Md. Arch.*, XX, 365; 1704, c. 32, *Md. Arch.*, XXVI, 287; 1712, c. 5, *Md. Arch.*, XXXVIII, 151; 1713, c. 4, *Md. Arch.*, XXIX, 338.

<sup>122</sup> William Holland withdrew from the bench in the court of appeals' consideration of Macnemara's writ of error. Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729*, p. 164.

Possibly the reason for Holland's withdrawing from the consideration of Macnemara's case in the court of appeals is that he was sitting as the chief justice of the provincial court in July of 1710, when the grand jurors indicted Macnemara and Mitchell for the alleged murder of Thomas Graham and when they had their trial, and in October of 1710, when the provincial justices decided that Macnemara was guilty of manslaughter rather than only of chance-medley and had him branded on the hand.

<sup>123</sup> Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729*, pp. 156-164.

<sup>124</sup> For the impossibility of determining when Macnemara was elected to the common council or as an alderman, see Chapter 7, "Respectability, 1713-1719," at Notes 166-169.

<sup>125</sup> William Bladen died on 9 August 1718 (C. Ashley Ellefson, *William Bladen of Annapolis, 1673?-1718: "the most capable in all Respects" or "Blockhead Booby"?* (2007), Volume 747 of Archives of Maryland Online, at <http://aomol.net/000001/000747/html/index.html>, Chapter 3, "Placeman," Note 3), and four of the indictments that he had brought against Macnemara were still outstanding when Macnemara died sometime between 11 August and 8 September 1719. For the date of Macnemara's death, see Note 131 below and Chapter 1, "Character," Note 11.

<sup>126</sup> See Chapter 9, "Harassment by Indictment, 1712-1719." Since four of the indictments were still outstanding when Macnemara died, we can say that Bladen harassed him for the rest of his life even though he died before Macnemara did. *Ibid.*, after Note 140-144.



<sup>127</sup> *Md. Arch.*, XXXIII, 127-128.

<sup>128</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 525-527. See also Chapter 11, “Disbarred Again, 1718.”

<sup>129</sup> *Md. Arch.*, XXXIII, 298, 302-303, 367, 372. See also Chapter 12, “Reinstatement and Outrage, 1719,”

<sup>130</sup> 1719, c. 17, *Md. Arch.*, XXXVI, 528-534. See also Chapter 13, “Disbarred Once More, 1719.”

<sup>131</sup> From the records of the provincial court that met on 8 September 1719:

The Defend! in these three Causes being Dead the Said Acc-  
cons are ordered to be so Entered.

All of the actions are the Proprietor against Thomas Macnemara. Provincial Court Judgment Record, Liber W. G., No. 1, p. 31.

The subjects of the indictments are not noted here, but see Chapter 9, “Harassment by Indictment, 1712-1719,” after Note 113-128.

*Chapter 6*  
*Dishonest Enemies, 1712*

By 3 June 1712 Thomas Macnemara had returned from England to face the charge of attempting to bugger Benjamin Allen.<sup>1</sup> His trip had been a success: the Privy Council had ordered not only that he have his writ of error and be restored to the practice of law in the province but also that the provincial justices send it a copy of the proceedings against him.

Faced with prospect of having to deal again with the obnoxious Macnemara, the provincial justices and the members of the council bestirred themselves. First they had to discredit him in England — and so justify themselves —, and then, if they could not drive him out of the province entirely, they had to make it impossible for him to practice law in Maryland. They tried the first through letters to the authorities in England, and they tried the second by harassing him with indictment after indictment and other prosecutions.<sup>2</sup> When that did not work they twice disbarred him by law.<sup>3</sup>

In two separate letters to the Board of Trade dated 18 July 1712 — three days after the opening of the session of the provincial court at which Macnemara's trial for the alleged attempted buggery was delayed until October<sup>4</sup> — three of the four provincial justices<sup>5</sup> and ten of the fourteen members of the council<sup>6</sup> defended the

provincial justices' raising Macnemara's crime in the death of Thomas Graham from chance-medley to manslaughter and tried to make his reputation as black in England as they were trying to make it in Maryland.

In the "Opinion of the greatest and best part" of the people of Maryland as well as "others adjacent," the three provincial justices pointed out, Macnemara, a "person of an Evil Notorious Life and Conversation," had "Unworthily for want of a true Representation of his Character" obtained the queen's order that he be restored to his practice in Maryland. By "others adjacent" the provincial justices apparently meant the people of Pennsylvania, where Macnemara had also been disbarred from the practice of law.<sup>7</sup>

In all humility the three provincial justices wanted to explain to the queen that the grounds for their judgment that Macnemara was guilty of manslaughter rather than only of chance-medley in the death of Thomas Graham — "a Quaker by principle & one without any weapon even so much as a Cane in his hand" at the time of the incident with Macnemara — were that it appeared by the evidence that Macnemara had attacked Graham with such great malice aforethought, inhumanity, and barbarity that his crime was actually murder. Because Macnemara's evil and sinister friends and relations had tampered with the jury, however, neither the plain evidence nor the persuasive arguments of the attorney general could induce the petit jurors to find him guilty of anything more serious than chance-medley. Finding that the jurors persisted in their verdict even though the justices sent them out a second and then a third time, the justices decided that though the jury had acquitted Macnemara of the murder for which he had been indicted they themselves "were Judges of the manner of the killing," and they decided that he was guilty of manslaughter.

The three provincial justices believed that they had every right to bar Macne-

marara from the practice of law before them. They most humbly suggested for the queen's consideration that the barbarous killing of Thomas Graham, together with Macnemara's many earlier crimes and misdemeanors, was legal and sufficient reason for them to deprive him of his practice in the provincial court.

The trouble with the provincial justices reference here to Macnemara's many crimes and misdemeanors is that before his conviction of chance-medley in the death of Thomas Graham he had never been convicted of any crime or misdemeanor. At the provincial court for May of 1704 he was acquitted of biting off Matthew Beard's ear on 10 April 1704, and the worst that had happened to him since then — and before the killing of Thomas Graham — is that at the Prince George's County court for March of 1706 he and William Stone were fined one hundred pounds of tobacco each for their abusive language toward each other in court and on 17 February 1707/8 Governor John Seymour set him in the stocks bare-breeched for his saucy answer to the sheriff, Josiah Wilson, after Peter Perry accused him of demanding a fee as his attorney when he should not have.<sup>8</sup>

With submission to her Majesty, the provincial justices believed that their commission made them judges of the behavior of the officers of the provincial court. That was as it should be, since they were the ones who best knew the lives and conversations of those officers. They hoped that the queen would agree that they had the power to suppress the evil activities of attorneys and to deprive them of their practices for their misdeeds.

Returning to their decision that Macnemara's killing of Thomas Graham was manslaughter rather than only chance-medley, the three provincial justices acknowledged that they were "not thorough Paced Lawyers" and then vaguely noted that they had "some reliance" on the case of John Vane Salisbury, in whose case, they asserted

incorrectly, the justices decided that while the jury in finding him guilty only of manslaughter had found “the Matter . . . they were Judges of the Manner” and resolved that Salisbury was guilty of murder, though he was not executed.

In referring to the case of John Vane Salisbury the provincial justices reveal either their ignorance or their dishonesty or both, since in that case the judges did not raise Salisbury’s crime from manslaughter to murder but rather had sentenced him to hang after the jury found him guilty of manslaughter.<sup>9</sup>

With the greatest humility the provincial justices laid all of this information before their dread sovereign as the true account of the case of “that Evill and Unfortunate man” and earnestly supplicated her that even though they might be mistaken in point of law she would agree that they were the proper judges of the crime and would reject the pretensions of Macnemara and his supporters.”<sup>10</sup>

Much more severe on Macnemara than the three provincial justices were, the members of the council reviewed his entire career in Maryland from the perspective of staunch enemies.<sup>11</sup> Though historians have tended to gulp down whole their charges against Macnemara,<sup>12</sup> a closer look at his career through the middle of 1712 reveals that they were being far less than honest.

With the “utmost Reluctance,” the members of the council began, they were compelled to trouble the Board of Trade with an account of the behavior of one Thomas Macnemara, “a most Infamous & unworthy person.” He was born in Ireland, where he had “gaind some Tollerable shoole [*sic*] learning from the Charity” of his uncle, a Popish priest. In 1703 or thereabouts, “wanting Bread in Ireland,” he bound himself to Charles Carroll of Maryland, according to the custom of the province. Since he was “a ready penman,” Carroll kept him to work for him, but within

a year or so, “among sundry other Insolencies & abuses,” as the members of the council had been informed, he deflowered one of Carroll’s nieces, but, according to her, “not without very much force.” For the sake of his niece Carroll freed Macnemara and married her off to him.

Macnemara then took the oaths to the government before the Anne Arundel County court and was admitted as an attorney there and shortly after that in the provincial court. He pretended to have left the Catholic church, in which he had been educated, but “among his Country Folks he said a Doze of squills would Cleare his Stomack”<sup>13</sup> of his oaths. In the more than seven years since he had claimed to have become an Anglican he had never yet taken Communion in the Anglican church in the province.

Instead, Macnemara had led a most flagitious life, and on several occasions he had demonstrated that he still considered himself a Roman Catholic. On one occasion in particular, “in a Great fitt of sickness” he asked his wife to send for a popish priest if she agreed that he was in as much danger as he thought he was in, but if she did not think that he was in great danger of dying “He would not have such [a] Priest come to him for never so much.”

As an attorney Macnemara behaved himself “with all the Insolence imaginable, abuseing and affronting the Justices” of the several courts in which he practiced. As he discovered that money, which he had not been acquainted with in Ireland, “came in plentifully, [he] Grew intolerably proud [*sic*] and abusive.” Even the late governor — John Seymour — and some of the members of his council could not escape his harsh attacks. As a result, a grand jury at the provincial court, “taking notice of his ill Behaviour” and on the oaths of many witnesses to his various enormities, had presented him as a common barrator and disturber of the peace.<sup>14</sup>

What the members of the council were referring to here has not appeared. Since no record of such a presentment remains in the records of the provincial court,<sup>15</sup> it might have existed only in the lively imaginations of the members of the council.

It was impossible for them to list all of Macnemara's offenses, the members of the council continued, but they would include some illustrations. They started out appropriately by making two errors in their report of Macnemara's alleged assault on Matthew Beard. First, they alleged that Macnemara had bitten off part of a boy's ear, but at the provincial court for May of 1704 a petit jury acquitted him of assaulting Matthew Beard of Annapolis and biting and tearing off his right ear.<sup>16</sup>

Second, Beard was not a boy but rather was not only an adult but was also an official, probably still with two jobs. On 25 February 1702/3, more than thirteen months before Macnemara was supposed to have bitten off Beard's ear, the council, with Thomas Tench as president, hired him as marshal or water bailiff of the Western Shore,<sup>17</sup> and on the death of his father, Richard Beard, sometime before 27 October 1703, he became acting armorer of the province and so became responsible for the public magazine in Annapolis and for keeping the public arms in good order.<sup>18</sup> On 1 May 1704, only three weeks after Macnemara was supposed to have bitten off his ear and about two weeks before Macnemara was acquitted of that violence, Governor Seymour and his council officially hired Beard as armorer with a salary of twenty pounds per year.<sup>19</sup>

And by November of 1708, only four-and-a-half years after Macnemara allegedly bit off Beard's ear, he became one of the original common-councilmen of Annapolis under its first charter and therefore must have been considered a responsible adult with some experience.<sup>20</sup>

Making Matthew Beard a boy made Macnemara appear worse than if the members of the council had admitted that Beard was an adult of some status. It was not as if the members of the council did not know about Beard and the outcome of the case. Two of the men who signed the letter, Samuel Young and Thomas Greenfield, had sat as provincial justices at the court at which Macnemara was acquitted.<sup>21</sup>

The members of the council might have been more accurate when they reported that when Macnemara was assigned as counsel for a pauper in the chancery court he took twenty shillings and “a Considerable Quantity of Bacon from the poor man and utterly refus’d and neglected to Do anything in his Cause.” It is in what they did not say that they are vulnerable here. They did not point out that the reason Macnemara could do nothing for Peter Perry is that when Perry complained to the council about him on 17 February 1707/8<sup>22</sup> he had been disbarred for four-and-a-half months. Nor did they point out that immediately after Seymour and his council disbarred him on 30 September 1707 he petitioned them for readmission to his practice because he had a great many cases ready for trial and had included in his petition his promise of “a reformation of his former past behaviour.” Seymour and his council were not convinced and told him that there would be time enough for him to apply later when “they were better Satisfied of his Change of Behaviour.”<sup>23</sup> Clearly therefore there was not much that Macnemara could do for Peter Perry, though his disbarment would not excuse him for taking a fee when he should not have, if in fact he had actually taken that fee.

Nor did the members of the council say anything about the imaginative punishment that Seymour invented for Macnemara that day. They did not point out that after Perry’s complaint Seymour ordered Macnemara set in the stocks for “one full hour bare Breeched” for his “Sawcy Answer” to Seymour and his council and for



his other audacious behavior. Seymour did remit one half hour of the punishment when a great wind arose.<sup>24</sup>

Reflecting the solid conviction of eighteenth-century authority that suspicion was the equivalent of guilt and that a suspect was guilty until he could prove himself innocent, the members of the council alleged that Macnemara had escaped two coroner's inquests into the deaths of his servants in spite of the most violent suspicion against him. Especially he was suspected in the death of a servant woman who had complained several times of his inhumane and barbarous treatment. The wounds on her head at the time of her death appeared to be not quite cured.<sup>25</sup>

No other evidence of these deaths has appeared. If they did actually occur, apparently the coroner's juries decided that Macnemara was not responsible for them.<sup>26</sup>

Continuing to illustrate their conviction that suspicion was as good as evidence, the members of the council alleged that Macnemara had "actually [*sic*] forced one Woman" at the Calvert County courthouse. There is no record, however, of any prosecution for this alleged rape. If he was indicted for such a crime he was not convicted, since if he had been convicted he would have been dead. The punishment for rape was death,<sup>27</sup> and Macnemara was not a very likely candidate for a pardon.

There was more. The members of the council alleged that Macnemara had been prevented from raping an eleven-year-old girl in Prince George's County only because somebody broke the door open while he was in the middle of forcing the girl. Yet no presentment, indictment, or recognizance relating to any such incident appears in the records of Prince George's County or of the provincial court.<sup>28</sup>

Macnemara, the members of the council claimed, had assaulted "a great many persons" without any just provocation and had to enter bond for his good behavior and to keep the peace for a year and a day. Later in their letter they include some

allegations that they apparently thought would justify this general claim.

Having earlier interrupted their recitation of Macnemara's violence to charge him with toying with the law by preferring indictments but not prosecuting them, the members of the council now left his alleged crimes and moved on to his offensiveness as an attorney. In his practice as a lawyer, they charged, he was so litigious and so presumptuous that the chief justice of the provincial court — either Thomas Smithson or William Holland<sup>29</sup> — “told him publicly he was fitt to be advocate for a man that had murther'd his Father and ravisht his mother.” While one of the chief complaints against Macnemara was his intemperate language,<sup>30</sup> surely such language as this, coming from the chief justice of the provincial court, could hardly be considered judicious.

Macnemara was not only litigious and presumptuous, but he also supported unpopular people. In the disturbances that Richard Clarke had allegedly caused, the members of the council alleged, he “was very Zealous to advise and defend” Clarke's abettors on all prosecutions,” as though enthusiasm in an attorney is an affront to justice. As a result of affronting the government in his defense of Clarke's alleged abettors, as well as because of his other bad behavior, Seymour with the advice of his council had suspended him from the practice of law in Maryland.<sup>31</sup> Here the members of the council must have been referring to Macnemara's defense of Joseph Hill, whom a petit jury at the provincial court for 13 May 1707 acquitted of helping Clarke.<sup>32</sup>

Macnemara went to Pennsylvania, where he was admitted to the practice of law, but because of his bad behavior he soon was disbarred there, “and discarded thence.” Disbarred and possibly even forced out of Pennsylvania,<sup>33</sup> Macnemara returned to Maryland, and since Governor Seymour had died he “feignd Repentance

of his former base actions” and was readmitted to the practice of law. Almost immediately, however, he committed “a most Barbarous & inhumane murder” upon Thomas Graham, a Quaker merchant from Pennsylvania, in Graham’s own sloop in the Chesapeake Bay. Thus the members of the council remained convinced that Macnemara had murdered Graham even though the petit jurors had refused three times to find him guilty of anything more serious than chance-medley, which the provincial justices had raised to manslaughter.<sup>34</sup>

The description that the members of the council gave of Graham’s killing was not likely to elicit any sympathy for Macnemara. Having taken out two writs against Graham, they said, he had sworn several times in the hearing of two witnesses that he would bring Graham ashore dead or alive. To get Graham ashore, he got a boat and some men with loaded pistols, as well as the sheriff, John Gresham Jr.,<sup>35</sup> to go with him. After they had proceeded some distance into the Bay, however, Gresham saw the arms and, knowing Macnemara’s furious temper and believing that Graham’s sloop was not within his bailiwick, caught a ride back to shore in another boat.

Macnemara continued on, and, presuming without any authority to bring Graham ashore, had a scuffle in which he shot Graham in the left shoulder and body, broke his arm with the barrel of his pistol, and “layd his scull open in severall places with the butt End,” which he broke on Graham’s head. Graham was “a miserable spectacle, being all over bruised and wounded.” Macnemara took him to his own house, where he lay in great misery for nearly two weeks, when he died.<sup>36</sup>

What happened to the other men who were supposed to have been with Macnemara the members of the council do not say.

Macnemara was indicted at the provincial court for murder, but because he had many Roman Catholic friends “to assist him in tampering with and sounding the

Inclinations of mo[st] of the jurors return'd” he knew which ones to challenge. The jury that resulted found him guilty only of homicide by chance-medley and persisted in that verdict “against plaine Evidence” even though the justices sent it out a second and then a third time to reconsider its verdict.

The justices would not accept that. Considering the barbarity of Macnemara’s attack and believing that the malice aforethought was implied by his acting without the authority of the sheriff and by his acting in his own case, they decided that he was guilty of murder. Deciding further that the jurors had decided the matter and that they themselves should decide the manner of the killing, and relying on the case of John Vane Salisbury in Plowden’s *Commentaries*, which did not fit Macnemara’s case at all,<sup>37</sup> they decided that he was guilty of manslaughter, and he was branded in the hand. Then, “the multitude of his former offences being remembred,” the council, with Edward Lloyd sitting as president<sup>38</sup> and with the advice of the justices of the provincial court,<sup>39</sup> again deprived him of his practice.

A short time after that, according to the council, Macnemara threatened John Dodd, an inn-keeper of Annapolis, and his wife and abused the sheriff of Anne Arundel County “in the face of the County Court.” Again he had to enter bond for his good behavior and for keeping the peace, but a few days later without any provocation he assaulted Richard Rolke, “beating him very much [and] allmost scooping out his Eyes.”<sup>40</sup>

Macnemara, however, was never prosecuted for any of these alleged offenses, and the only evidence of them comes from this letter from his enemies. This might have been the occasion, however, when he forfeited one bond and had to enter a larger one.<sup>41</sup>

Macnemara’s next great offense, according to the members of the council, was

to break open William Taylard's kitchen at midnight and to creep up into the loft, where two of Taylard's servants, Richard Lock and Benjamin Allen, were in bed together and where Macnemara either buggered or violently attempted to bugger Allen, who, according to the members of the council, was only about fourteen years old. Allen tried to escape by flouncing out of bed several times, but each time Macnemara hauled him back onto the bed, "once by his privitys." While all of that was going on Lock lay quiet because of Macnemara's "many bloody & [te]rrible Threats."

Here, just as they were in their claims about Macnemara's alleged assault on Matthew Beard, the members of the council were careless with the facts. First, while they claim that Macnemara broke open Taylard's kitchen at night and crept up to the loft, in neither of the two indictments against Macnemara for attempting to bugger Benjamin Allen do the grand jurors say anything about his breaking into Taylard's kitchen, either at night or at any other time.<sup>42</sup>

Second, while unlike the writer of 4 April 1711<sup>43</sup> the members of the council do admit the possibility that Macnemara had only attempted to bugger Allen, they still suggest that Macnemara might actually have buggered him. They say that Macnemara "bugger'd or violently [att]empted to bugger" Allen even though by the time they were writing, on 18 July 1712, he had been indicted at the provincial court for April of 1711 only for *attempting* to bugger Allen;<sup>44</sup> even though William Holland was one of the two justices sitting at the provincial court when the grand jury returned that indictment;<sup>45</sup> and even though three of the men who signed the letter — Edward Lloyd, William Holland, and Samuel Young — had sat in the chancery court on 3 June 1712, when the record states specifically that the indictment was only "for Attempting to Bugger" Benjamin Allen.<sup>46</sup>

And while the members of the council had already convicted Macnemara of *one*

of those crimes, when at the provincial court for October of 1712 he finally pleaded guilty only to the charge of assaulting Allen the provincial justices fined him fifteen hundred pounds of tobacco for the assault and dismissed the more serious charge.<sup>47</sup>

After the incident with Benjamin Allen — “this last Exploit,” as the members of the council put it —, Macnemara fled the province and could not be arrested in spite of the warrants issued against him. He had gone to London, where he petitioned the queen about what had happened to him in Maryland and also “found means” to get himself entered in Gray’s Inn and called to the bar.

At this point the members of the council included the proceedings on Macnemara’s petition to the queen. The Lords of the Committee for Hearing Appeals from the Plantations had decided that since Macnemara had been convicted only of homicide *per infortunium* the provincial justices should have discharged him rather than order him branded in the hand and that his offense was not serious enough to justify his being disbarred. The queen agreed and ordered that Edward Lloyd, the president of the council and chancellor, restore Macnemara to his practice and grant him a writ of error and that the justices of the provincial court immediately send the Privy Council a copy of the proceedings against Macnemara so that full and speedy justice could be done him.

The members of the council were convinced that Macnemara had won the favor of the queen and her Privy Council only because nobody appeared to challenge him or explain his true character. In obedience to the queen’s Order in Council, however, on 3 June 1712 Lloyd did restore Macnemara to his practice in chancery — but then immediately suspended him again until he could be legally acquitted of the outstanding indictment for the attempted buggery of Benjamin Allen.

Macnemara, the members of the council concluded, had threatened to complain

to the queen again, but they most humbly hoped that “your Lordship”<sup>48</sup> would inform her of Macnemara’s real character, which they had good reasons to believe could be “sufficiently proved on oath in Every Circumstan[ce].”<sup>49</sup>

If Thomas Macnemara had not gone to England to protest his treatment in Maryland the authorities there would have known nothing about the extravagant efforts of the provincial justices to railroad him to his death,<sup>50</sup> and historians also know about that railroading only because the provincial justices and the members of the council had to respond to Macnemara’s complaints. The record of Macnemara’s trial<sup>51</sup> is by itself all but useless in determining what actually happened to him and, making it appear that he pleaded benefit of clergy for chance-medley, is in fact misleading. The crucial evidence comes from other sources.

The provincial justices’ refusal of Macnemara’s and Mitchell’s asking for counsel at their trial comes not from the record of the trial but rather is recorded in the records of the provincial court separately from those proceedings and is not a part of the record sent to England.<sup>52</sup> Similarly, the provincial justices’ sending the petit jurors out a second and then a third time trying to get them to find Macnemara guilty of murder rather than only of chance-medley, their over-ruling the petit jury by illegally raising his crime from chance-medley to manslaughter, and Macnemara’s being disbarred in the province were no part of the record but appear only in the letters of the provincial justices and the members of the council to the Board of Trade,<sup>53</sup> letters that they wrote only after Macnemara had complained and the Privy Council had demanded a transcript of the trial.<sup>54</sup> The provincial justices might not have known what Macnemara had told the authorities in England, but they knew what he *might* have told them, and they had to justify themselves.

The absence of this important information from the record sent to the court of appeals on Macnemara's writ of error<sup>55</sup> would not have mattered much to the judges of the court of appeals, since as members of the council, as they make clear in their letter of 18 July 1712 to the Board of Trade, they knew what the provincial justices had done. Six of the members of the court of appeals who considered the record of the case on 12 May 1713 had signed the letter to the Board of Trade as members of the council on 18 July 1712.<sup>56</sup> But to the authorities in England, as the Privy Council made clear, the absence of this information would have mattered a great deal.

That the denial of Macnemara's and Mitchell's request for counsel appears separately from the rest of the record of the trial and therefore would not appear in the transcript that eventually would be sent to England; that neither the provincial justices nor the members of the council ever did tell the authorities in England that the provincial justices had denied the request for counsel; that the justices' raising of Macnemara's crime from chance-medley to manslaughter does not appear anywhere in the record; that only after Macnemara had already had a chance to provide information about the trial to the authorities in England and the queen and her Privy Council had supported Macnemara against them<sup>57</sup> did any of the authorities in Maryland record any hint that the provincial justices had sent the petit jurors out a second and then a third time and when they could not get the verdict they wanted raised Macnemara's crime themselves from chance-medley to manslaughter — all of these realities might make it appear that the provincial justices and the members of the council thought that they had something to hide.

Since by the time the provincial justices and the members of the council wrote their letters to the Board of Trade on 18 July 1712 they all knew that Macnemara had told the authorities in England what had happened and that the Privy Council had



supported him, their letters might be interpreted as efforts to reduce the impact of Macnemara's information by pointing it out themselves. They had to justify themselves, and admitting what had happened — even belatedly — would help to do that. They would put a quite different slant on the episode than Macnemara already would have done, and they could also try to justify themselves by belaboring other serious but irrelevant and sometimes apparently false allegations against this controversial attorney. Since they had no intention of abandoning their campaign against him,<sup>58</sup> it was necessary for them to demonize him as much as they could.

The letters of the provincial justices and the members of the council were the first shots in a renewed campaign to destroy Thomas Macnemara. From 1712 until his death in late August or early September of 1719 he would be constantly under siege, defending himself against whatever charges the troublesome William Bladen, the attorney general, could dream up against him in indictment after indictment as well as in two writs of *scire facias*.<sup>59</sup>

*Chapter 6*  
*Dishonest Enemies, 1712*

<sup>1</sup> Chancery Record 2, p. 833.

<sup>2</sup> See Chapter 9, “Harassment by Indictment, 1712-1719.”

<sup>3</sup> See Chapter 11, “Disbarred Again, 1718,” Chapter 12, “Reinstatement and Outrage, 1719,” and Chapter 13, “Disbarred Once More, 1719.”

<sup>4</sup> Provincial Court Judgment Record, Liber T. P., No. 2, p. 495.

<sup>5</sup> The three provincial justices who signed the letter of 18 July 1712 to the Board of Trade were William Holland, Thomas Smyth, and Robert Bradley, the three justices who sat at the provincial court both in July of 1710, when the petit jury three separate times found Macnemara and Mitchell guilty only of chance-medley rather than murder, and in October of 1710, when the justices ordered Macnemara branded after they raised his crime from chance-medley to manslaughter and he pleaded benefit of clergy and when the justices gave Mitchell additional time to sue out his pardon. The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 127-128 (photocopy in Library of Congress); The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXVII, No. 16.i; Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231, 383.

The fourth justice who sat at the provincial court for July of 1710 was Philemon Lloyd. He did not sit at the provincial court for October of 1710. Provincial

Court Judgment Record, Liber P. L., No. 3, pp. 231, 383.

<sup>6</sup> The members of the council who signed the letter of 18 July 1712 against Macnemara were Edward Lloyd, the president of the council, and William Holland, Thomas Ennalls, Samuel Young, Thomas Greenfield, Charles Greenberry, Thomas Addison, Philemon Lloyd, John Dorsey, and Richard Tilghman. TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.

Other members of the council in July of 1712 were William Coursey, Robert Quarry, John Hall, and William Whittington. Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 39, 40.

Papenfuse and his colleagues list the members of the two houses of the assembly, but the membership of the council was the same as that of the upper house.

<sup>7</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXXIII, 141-144; Chapter 3, "Early Troubles, 1703-1710," at Notes 211-216.

<sup>8</sup> For these incidents, see Chapter 3, "Early Troubles, 1703-1710," at Notes 2-12, 24, 100-105. Macnemara did not plead guilty to assaulting Benjamin Allen until October of 1712, three months after the members of the council wrote their letter. Provincial Court Judgment Record, Liber T. P., No. 2, pp. 2, 576, 580, 586-587, 587-588; Chapter 5, "Railroading, 1710-1713," at Notes 89, 95-103.

<sup>9</sup> Edmund Plowden, *The Commentaries, or Reports of Edmund Plowden, of the Middle-Temple, Esq; An Apprentice of the Common Law, containing, Divers Cases upon Matters of Law, Argued and Adjudged in the Several Reigns of King Edward*

*VI. Queen Mary, King and Queen Philip and Mary, and Queen Elizabeth, Originally Written in French . . .* (Dublin: Printed for H. Watts, 1792), (no page numbers), header Anno 1 Mary I.

For the case of John Vane Salisbury, see also Chapter 5, “Railroading, 1710-1713,” at Notes 37-39.

<sup>10</sup> TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i.

<sup>11</sup> William Holland, the chief justice of the provincial court (Provincial Court Judgment Record, Liber T. P., No. 2, p. 495), signed both the letter of the provincial justices and the letter of the council.

<sup>12</sup> See for example Aubrey C. Land, *The Dulanys of Maryland: A Biographical Study of Daniel Dulany, the Elder (1685-1753) and Daniel Dulany, the Younger (1722-1797)* (Baltimore: Maryland Historical Society, 1955; reprinted Baltimore: The Johns Hopkins Press, 1968), pp. 7-10, 15-16, 16-17, 28, 34-35, 41, 210, and Beatriz Betancourt Hardy, “‘A most Turbulent and Seditious person’: Thomas Macnemara of Maryland,” *Maryland Humanities*, Issue Number 72 (January 1999), pp. 8-11.

<sup>13</sup> A squill is “the dried bulb of a plant of the lily family, sliced and used in medicine as an expectorant, diuretic, etc.” *Webster’s New World Dictionary of the American Language* (College Edition, 1959).

<sup>14</sup> Barratry is “the habitual bringing about of quarrels or lawsuits.” *Ibid.*

<sup>15</sup> Since the members of the council say that “the Grand Jury of the Province” presented Macnemara as a common barrator, the presentment would have had to come at the provincial court. In the Provincial Court Judgment Record for the period from 1703 through 1712, which except for the session for September of 1706 appears

to be quite complete, I have not been able to find any presentment of Thomas Macnemara for being a common barrator and disturber of the peace. Provincial Court Judgment Record, Libers T. L., No. 3; T. B., No. 2; P. L., No. 1; P. L., No. 2; P. L., No. 3; and T. P., No. 2.

Alan Day does not mention any such presentment. Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), pp. 513-514.

It is possible, of course, that if Macnemara was actually presented for barratry the members of the council were remembering wrong and that the presentment came at the assizes, which during their first embodiment existed from May of 1708 through September of 1710. C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), pp. 73-114. Sometime before July of 1709 Cornelius White, acting as attorney for Macnemara, got a *certiorari* directing the justices of the assizes for Anne Arundel County “to Certifie all Indictm<sup>ts</sup> &<sup>ca</sup> against the said Macnemara Depending” before them to the provincial court, but at the provincial court for July of 1709 there was “no returne Made” of the *certiorari*. Provincial Court Judgment Record, Liber P. L., No. 2, p. 612.

I have found no further proceedings on this *certiorari*, and therefore have found no evidence that Macnemara was ever tried for, much less found guilty of, whatever it was he was accused of in the proceedings to which this *certiorari* applies.

<sup>16</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 266, 268-270; Day, *A Social Study of Lawyers in Maryland, 1660-1775*, p. 513.

<sup>17</sup> *Md. Arch.*, XXV, 140, 146-149; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXI, No. 379 (p. 224).

<sup>18</sup> *Md. Arch.*, XXIV, 316.

<sup>19</sup> *Ibid.*, pp. 346-347. Later Matthew Beard was a carpenter. 1715, c. 5, *Md. Arch.*, XXXVIII, 183-185.

<sup>20</sup> Petition of Corporation and Inhabitants of Annapolis, 18 November 1708, Chancery Record 2, pp. 595-596; Elihu S. Riley, "The Ancient City." *A History of Annapolis, in Maryland, 1649-1887* (Annapolis: Record Printing Office, 1887), pp. 86-87.

<sup>21</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 258, 264.

<sup>22</sup> *Md. Arch.*, XXV, 234-235.

<sup>23</sup> *Ibid.*, pp. 226-227.

<sup>24</sup> *Ibid.*, pp. 234-235. For the issue of the alleged illegal fee as well as for the citation to Peter Perry's action against Roger Woolford in the chancery court, see Chapter 3, "Early Troubles, 1703-1710," at Notes 100-105.

<sup>25</sup> If one of Macnemara's female servants did die under suspicious circumstances, one wonders whether she could have been Margaret Deale, who complained against Macnemara at the Anne Arundel County court for January of 1705/6. Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 150. See also Chapter 1, "Character" at Note 76.

<sup>26</sup> There is no presentment or indictment against Macnemara for either of these deaths in the Provincial Court Judgment Record, the Anne Arundel County Court Judgment Record, the Prince George's County Court Record, or the Baltimore County Court Proceedings. It is possible, however, that there were proceedings against him at a special court of oyer and terminer or at the assizes, which during Macnemara's lifetime existed from April of 1708 through September of 1710. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 73-114,

especially p. 112.

A court of oyer and terminer and jail delivery was a special court appointed to try one or more cases or to empty a jail. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 114-118.

Few records of the special courts of oyer and terminer and few criminal records of the assizes remain, and therefore if there were proceedings against Macnemara at one of those courts there is no way to know what happened.

<sup>27</sup> Since the punishment for rape was death, Macnemara would have been tried either at the provincial court, at a special court of oyer and terminer and jail delivery, or at the assizes for Calvert County. The county courts did not get the power to try white people for capital crimes until 1773. 1773, first session, c. 1, *Md. Arch.*, LXIII, 391-393.

Since most of the records of the special courts of oyer and terminer and jail delivery as well as most of the records of criminal cases tried at the assizes have not survived, it is possible that Macnemara was tried and acquitted of this alleged rape in a prosecution of which no record remains.

For the assizes, see Chapter 3, "Early Troubles, 1703-1710," Note 37.

For attempted rape and rape in eighteenth-century Maryland, see Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 289-291.

<sup>28</sup> Prince George's County Court Record, Libers B, C, D, and G; Provincial Court Judgment Record, Libers T. L., No. 3; T. B., No. 2; P. L., No. 1; P. L., No. 2; P. L., No. 3; and T. P., No. 2.

The punishment for attempted rape by a white man was a fine. Anne Arundel County Court Judgment Record, Liber R. C., No. 1, pp. 71-75; Liber I. B., No. 1, pp. 9-10; Prince George's County Court Record, Liber V, p. 412; Provincial Court

Judgment Record, Liber E. I., No. 7, pp. 480-481.

For another case of attempted rape, see Somerset County Judicial Record, 1690-1691, pp. 38-42. Both Alan Day and Ross Kimmel pointed this case out to me.

For a slave, the punishment for an attempted rape in January of 1698/9 was a whipping (Somerset County Judicial Record, 1698-1701, p. 92), and in 1769 death, although this convicted slave received a pardon. *Md. Arch.*, XXXII, 270-271; Commission Records, 1733-1773, p. 222.

<sup>29</sup> Thomas Smithson was chief justice of the provincial court from 5 December 1700 until March of 1707/8. Provincial Court Judgment Record, Liber W. T., No. 3, pp. 612-614; Liber W. T., No. 4, pp. 3-4, 165-167; Liber T. L., No. 3, pp. 258-259; Liber T. B., No. 2, pp. 65-67; Liber P. L., No. 1, pp. 89, 233, 234; *Md. Arch.*, XXV, 226; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 487-488.

William Holland presented his separate commission as chief justice of the provincial court at the provincial court for September of 1708, though he presided at the two previous provincial courts — those for April and July of 1708. Provincial Court Judgment Record, Liber P. L., No. 2, pp. 23, 129, 252. He was last commissioned chief justice on 14 July 1718, and he last sat as chief justice at the provincial court for October of 1719. *Md. Arch.*, XXV, 251, 320; Provincial Court Judgment Record, Liber V. D., No. 1, pp. 626-628; Liber V. D., No. 2, pp. 129-130; Liber P. L., No. 4, pp. 91-92; Liber W. G., No. 1, p. 44.

<sup>30</sup> See for example the attack of the provincial justices on Macnemara on 5 May 1718. *Md. Arch.*, XXXIII, 171-172; Chapter 11, “Disbarred Again, 1718,” at Notes 62-74.

<sup>31</sup> For John Seymour’s disbaring Macnemara on 30 September 1707, see *Md.*



*Arch.*, XXV, 223-224, 226-227; Chapter 3, “Early Troubles, 1703-1710,” at Notes 44-52.

<sup>32</sup> For Joseph Hill, see Chapter 3, “Early Troubles, 1703-1710,” at Notes 54-92.

<sup>33</sup> The term “discarded thence” might mean either that Macnemara was forced to leave Pennsylvania or only that he was denied the right to practice law there. An obsolete meaning of “discard” is “To dismiss or banish (a person) from (a place).” *Oxford English Dictionary Online*.

For Macnemara’s problems in Pennsylvania, see Chapter 3, “Early Troubles, 1703-1710,” at Notes 211-216.

<sup>34</sup> For the prosecution of Thomas Macnemara and John Mitchell for murder in the death of Thomas Graham, see Chapter 5, “Railroading, 1710-1713,” at Notes 1-72, 105-111.

<sup>35</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, pp. 114, 155.

<sup>36</sup> Again it is unclear whether “his own house” means Thomas Macnemara’s house or Thomas Graham’s, but it appears more likely that it was Thomas Graham’s.

<sup>37</sup> For the case of John Vane Salisbury, see again Chapter 5, “Railroading, 1710-1713,” at Notes 37-39.

<sup>38</sup> Donnell M. Owings, *His Lordship’s Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 120.

<sup>39</sup> The justices of the provincial court in 1710 were William Holland, Thomas Smith, Philemon Lloyd, and Robert Bradley. Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231, 383.

<sup>40</sup> Here the members of the council appear to be reporting their information about what had happened at the session of the Anne Arundel County court for

November of 1710, where the justices ordered Macnemara to enter a bond of twenty pounds sterling, with one surety of ten pounds, to guarantee his good behavior for as long as he stayed in the province or until the Anne Arundel County court for March of 1710/11, and when he forfeited that bond forced him to enter a new bond, this one of one hundred pounds sterling with two sureties of fifty pounds sterling each, to guarantee his appearance at the Anne Arundel County court for March of 1710/11, if he remained in the province for that long, and to guarantee his good behavior in the meantime. Anne Arundel County Court Judgment Record, Liber T. B., No. 2, pp. 201, 204.

For the difficulty of understanding what the members of the council were referring to here, see Chapter 5, "Railroading, 1710-1713," especially at Note 87.

<sup>41</sup> See previous Note.

<sup>42</sup> Provincial Court Judgment Record, Liber T. P., No. 2, pp. 586-587, 587-588.

<sup>43</sup> TNA (PRO), Colonial Office 5, Vol. 720, No. 8ii; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(b).

<sup>44</sup> Provincial Court Judgment Record, Liber T. P., No. 2, pp. 2, 586-587.

<sup>45</sup> *Ibid.*, p. 1.

<sup>46</sup> Chancery Record 2, p. 833. Besides the evidence in the text that the members of the council must have known that Macnemara had been accused only of attempting to bugger Benjamin Allen rather than of bugging him, by the time the members of the council were writing, three days after the provincial court opened on 15 July 1712, Macnemara probably had asked for an immediate trial for the attempted buggery, since apparently he made that request on the first day of court. Provincial Court Judgment Record, Liber T. P., No. 2, p. 495.

Chief Justice William Holland, one of the men who signed the letter, appears

to have been especially bewildered — to use no less generous a word — in the consideration of the charge against Macnemara. He sat as chief justice of the provincial court in April of 1711, when the first grand jury indicted Macnemara only for attempted buggery (Provincial Court Judgment Record, Liber T. P., No. 2, pp. 1, 2, 586-587), and in July of 1712, when Macnemara asked for his trial but did not get it (*ibid.*, p. 495), as well as in the chancery court with Edward Lloyd and Samuel Young on 3 June 1712, when the chancery record refers to Macnemara's indictment "for Attempting to Bugger" Benjamin Allen. Chancery Record 2, p. 833.

Unless Holland was unconscious for much of the fifteen months from April of 1711 to July of 1712, therefore, he must have known what Macnemara had been indicted for.

<sup>47</sup> Provincial Court Judgment Record, Liber T. P., No. 2, pp. 576, 587-588; Chapter 5, "Railroading, 1710-1713," at Note 103.

<sup>48</sup> "Your Lordship," apparently, was Lord Dartmouth, the Secretary of State for the Southern Department. TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16; Sir George Clark, *The Later Stuarts, 1660-1714* (2nd edition; Oxford: The Clarendon Press, 1955), p. 462.

<sup>49</sup> TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.

<sup>50</sup> Of course Macnemara could have written his complaints to England, but no doubt his going there in person was much more effective than a mere written statement would have been.

<sup>51</sup> TNA (PRO), Colonial Office 5, Vol. 720, pp. 32-35.

<sup>52</sup> Provincial Court Judgment Record, Liber P. L., No. 3, p. 257; TNA (PRO), Colonial Office 5, Vol. 720, pp. 32-35. The proceedings against Macnemara and

Mitchell are in Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231-234, 398-400.

<sup>53</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16; Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i.

<sup>54</sup> Included in Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>55</sup> Carroll T. Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729* (Washington: The American Historical Association, 1933), pp. 156-164.

<sup>56</sup>	Signed letter of Council of 18 July 1712	Sat on court of appeals  12 May 1713
	Edward Lloyd William Holland Thomas Ennalls Samuel Young Thomas Greenfield Charles Greenberry Thomas Addison Philemon Lloyd John Dorsey Richard Tilghman	Edward Lloyd William Holland *  Samuel Young Thomas Greenfield Charles Greenberry  Philemon Lloyd  Richard Tilghman John Hall

TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16; Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729*, p. 152.

\* William Holland disqualified himself from the consideration of Macnemara's case in the court of appeals (Bond, ed., *Proceedings of the Maryland Court of*

*Appeals, 1695-1729*, p. 164), probably because he sat as chief justice at the provincial court both in July of 1710, when Macnemara and Mitchell were convicted of chance-medley, and in October of 1710, when Macnemara pleaded benefit of clergy. Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231, 383.

<sup>57</sup> The response of the queen and her Privy Council to Macnemara's petition had arrived in the province by 3 June 1712, when Edward Lloyd, William Holland, and Samuel Young sitting in the chancery court restored Macnemara to his practice in chancery but then immediately again disbarred him from practicing in chancery because of his indictment for attempting to bugger Benjamin Allen (Chancery Record 2, p. 833), and the provincial justices and the members of the council did not write their letters until more than six weeks later, on 18 July 1712. TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127, 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, Nos. 16, 16.i.

<sup>58</sup> See Chapter 9, "Harassment by Indictment, 1712-1719."

<sup>59</sup> *Ibid.*

## *Chapter 7*

### *Respectability, 1713-1719*

In spite of his various conflicts with authority before 1710, his branding in October of 1710 in the death of Thomas Graham, and his pleading guilty in October of 1712 to assaulting Benjamin Allen on 22 December 1710, Thomas Macnemara's reputation must not have been all bad. After May of 1713, when on the order of the queen the court of appeals reversed the provincial justices' judgment of manslaughter against him,<sup>1</sup> he held at least six official positions. He was clerk of the lower house from 22 June 1714 to 28 May 1717; a member of the common council and then an alderman of Annapolis before 29 September 1715, when he was elected mayor of the city; then alderman of Annapolis again in 1716 when he left the office of mayor and apparently until he died sometime between 11 August and 8 September 1719;<sup>2</sup> naval officer of Patuxent from the summer of 1717 until his death; and procurator of office for Jacob Henderson, the ecclesiastical commissary of the Western Shore, from 4 December 1717 until his death. He was also the attorney for Maurice Birchfield, the surveyor general of customs, at least from May of 1714 and forward.

Yet Macnemara never became a member of the emerging ruling class of the province. He continued to be as obnoxious to that clique and its functionaries as he

had been in the past, and that might have been what a significant portion of the population liked about him.

Possibly already a common-councilman of Annapolis,<sup>3</sup> on 22 June 1714 Macnemara became clerk of the lower house to replace the deceased Richard Dallam after Governor John Hart and his council had no objection to the delegates' appointing him.<sup>4</sup> At that time Hart, who would become one of Macnemara's most implacable enemies,<sup>5</sup> had been in the province for less than a month<sup>6</sup> and therefore would not have had much acquaintance with Macnemara, but six of the seven members of the council who had no objection to him that day had signed the ferocious letter to the Board of Trade against him twenty-three months earlier.<sup>7</sup> Macnemara continued as clerk of the lower house until 28 May 1717, when he was absent from the province and the delegates chose Michael Jenifer to replace him.<sup>8</sup>

Being clerk of the lower house did not mean that Macnemara would exhibit an uncritical loyalty to the delegates, and he soon challenged them. On 28 June 1714, only six days after he became clerk, the lower house decided by a majority vote that in the "Bill for relieving the Inhabitants of this Province from some Aggrievances in the Prosecution of Suits at Law" the clause that would have allowed an attorney in a county court a fee of two hundred pounds of tobacco in any action in which the demand exceeded ten pounds sterling or two thousand pounds of tobacco should be left out.<sup>9</sup> That upset the attorneys who practiced in the county courts, since eliminating that clause would cut their fees in those actions in half.<sup>10</sup>

The next afternoon the upper house read the petition of Philemon Lloyd, deputy secretary of the province and a member of the council and the upper house; Charles Carroll, the attorney "for divers Merchants and others in Great Britain";

Amos Garrett, a merchant; and Thomas Macnemara, Wornell Hunt, and Thomas Bordley, lawyers, asking to be heard against that bill and ordered that the petitioners appear the following morning at nine o'clock.<sup>11</sup>

Before the upper house the next morning Carroll, Bordley, and Lloyd criticized other provisions of the bill,<sup>12</sup> but Macnemara was unable to attend the upper house that day because he was “employed in the publick Service,” apparently as clerk of the lower house. Therefore on the following morning — 1 July — on behalf of himself and other lawyers of the province he petitioned the upper house to restore that clause to the bill. The upper house did recommend the restoration of the clause and notified the lower house of its recommendation.<sup>13</sup> Again by a majority vote, however, the lower house immediately decided not to restore the clause.<sup>14</sup>

The delegates did not bother to notify the upper house of its vote but simply sent the bill back to the upper house with the clause still deleted. The next day — 2 July — the members of the upper house reminded the delegates of their recommendation that the clause be restored and expressed their concern that the delegates had not taken any notice of that recommendation. They still believed that the clause should be restored.<sup>15</sup>

The delegates were still not convinced. In their response that afternoon they reminded the members of the upper house that on 30 June the upper house had passed the bill in an earlier reading with some amendments but without that clause,<sup>16</sup> and, noting pointedly that it was “desirous to avoid Multiplicity of Messages as tending very much to the Delay of Business,” asked the members of the upper house to accept the bill as it stood.<sup>17</sup>

The members of the upper house felt the sting of the implied criticism and had some criticism of their own. In an immediate response they agreed that the multiplic-



ity of messages did very much tend to delay business and assured the delegates that they were sorry for that, but then they pointed out that the delegates could have prevented the delay if they had “taken Notice of the Recommendation . . . in Favour of Attorneys practising in the County Courts” that they had sent to the lower house “immediately after the Amendments proposed to the bill and even before they were debated” in the lower house. Since the merchants in England might justly complain that the low fees for attorneys practicing in the county courts might make it impossible for them to find qualified lawyers to prosecute their actions there, the members of the upper house had to insist on restoring the clause to the bill. The delegates’ refusal to accept the change was the only thing blocking its passage.<sup>18</sup>

On 3 July the delegates, “desirous to keep a good Correspondence” with the upper house and hoping to end the session “with the like good Temper [with which] it was opened,” requested the establishing of a conference committee.<sup>19</sup> The upper house agreed,<sup>20</sup> and when the committee of three members of the upper house and six delegates met at John Dodd’s house<sup>21</sup> that same day — Saturday, 3 July, the last day of the session —, the delegates gave up. The conferees agreed to recommend that in any action in a county court in which the real debt sued for or the balance recovered exceeded ten pounds sterling or two thousand pounds of tobacco the attorney should have two hundred pounds of tobacco.

Not only did the delegates on the committee agree to the higher fee for the attorneys, but they also agreed to reduce the penalty for attorneys who demanded or accepted excessive fees. While by the act of 1708 the assembly provided that such an attorney would be disbarred from the practice of law in any court in the province in the future,<sup>22</sup> the conferees now recommended that any attorney who practiced in a county court and who refused to take a case unless he received his fee in advance

or the client provided security in advance to guarantee payment of his fees, as well as any attorney who asked for a greater fee than the law allowed, would forfeit five hundred pounds of tobacco, one half to the queen for the support of the government and the other half to whoever would bring suit against the culpable attorney, and would be suspended from his practice in that court for one year. The conferees also recommended that these provisions be added to the bill for reviving the act that provided for officers' fees rather than to the bill for relieving the inhabitants of some grievances in the prosecution of suits at law.<sup>23</sup>

Both houses accepted the recommendation,<sup>24</sup> and therefore the attorneys not only got higher fees for the more expensive cases in the county courts but also got a reduced penalty for demanding or accepting excessive fees.<sup>25</sup>

During the summer of 1716 the quality of the tobacco used to pay Macnemara's salary became an issue. On 26 May 1715, eleven months after Macnemara became clerk, the delegates unanimously ordered that all of the tobacco that Macnemara would receive for his assistant clerk, for their expenses, and "for transcribing and recording" the Journals of the lower house be paid to him in Anne Arundel, Calvert, and Prince George's counties "or any one or more of them" and that the Committee for Laying the Public Levy apportion the fees among those counties.<sup>26</sup>

No doubt Macnemara wanted his tobacco from those counties because the quality of the tobacco raised there was among the highest in the province.<sup>27</sup> In a petition to the lower house on 26 July 1716 he pointed out that in spite of its order of the previous year the Committee for Laying and Apportioning the Public Levy for that year had decided that more than ten thousand pounds of his tobacco would come from Somerset County. He had not been able to collect any of that tobacco,<sup>28</sup> and he

petitioned the lower house that when he did collect it he “be allowed Something for the difference in Goodness” between the tobacco of Somerset County and that of those other three counties.<sup>29</sup>

The delegates unanimously rejected Macnemara’s petition,<sup>30</sup> but a week later — on 2 August 1716 — they increased his salary and again ordered that the clerk be paid in the higher quality of tobacco. They ordered that Macnemara be allowed fifteen thousand pounds of tobacco instead of twelve thousand pounds<sup>31</sup> for his salary as clerk of the lower house for the year “Ending next fall,” that for every year after that the clerk be paid fourteen thousand pounds of tobacco, and that that tobacco be paid in Anne Arundel, Calvert, and Prince George’s counties. For that money Macnemara and his successors would record the journals of every session and deliver the Speaker a fair copy of them.<sup>32</sup> That extra thousand pounds of tobacco for 1716 might have been Macnemara’s consolation for having to accept more than ten thousand pounds of tobacco from Somerset County as part of his earlier salary.<sup>33</sup>

When the delegates raised Macnemara’s salary he was already in trouble again. On 10 June 1716, the birth-night of the Pretender,<sup>34</sup> some Catholics fired the guns of Annapolis, and when they were tried at a special court of oyer and terminer in Annapolis on 10 July he served as their counsel and allegedly “Audaciously and with an Insulting Air” threatened the justices by saying “let me see who dares try them by this Comission.”<sup>35</sup> On 4 October, five days after his year as mayor expired, Hart and his council called him before them to inquire into his “Character Principles in Religion Loyalty and Affection” for the king and his family, and a week later Macnemara allegedly announced to “divers faithful subjects” of the king that on that occasion Hart and his council acted like the Spanish Inquisition, a piece of seditious speech for

which the grand jury at the provincial court for April of 1718 indicted him and for which by July of 1718 he had received the king's pardon without ever being tried because his alleged offense had occurred before 1 May 1717.<sup>36</sup>

Soon after his allegedly seditious speech of 11 October 1716 Macnemara went to England. One of his objects there was to try to get Hart fired, just as some of the Catholics, led by Charles Carroll, were apparently also trying to do.<sup>37</sup> In an undated letter to the king Macnemara charged that in May of 1715 Hart, "in Partnership with some of the Principal Inhabitants" of the province, illegally imported into Maryland "several Pipes & Hogsheads of Lisbon Wine, Several Barrells of Raisons[,] a large quantity of Brazill Sugar, Several Jarrs of Florence Oyle, and a large quantity of Corks" in a vessel belonging to him and others. Hart "so farr awed or influenced the Officers of the Customs . . . that they required no Entry to be made" of those goods, which to Macnemara's certain knowledge had been divided among the adventurers. Though Hart knew that since these items were imported illegally both they and the ship in which they were imported were subject to forfeiture he never caused them to be seized or informed against. For that failure Hart himself by law should not only forfeit one thousand pounds sterling, one half of which would go to the king and the other half to whoever would sue for it, but should also be removed as governor.<sup>38</sup>

Macnemara claimed that he had given this information, along with the names of witnesses who could prove his allegations, to William Bladen, the attorney general, but that since Bladen was appointed by Hart he refused to prosecute him. Since the witnesses were in Maryland, Hart could not be tried in Westminster, and in Maryland all officers for the administration of justice were appointed by Hart, who as governor had such great power and so awed the people that "no Justice . . . [could] be had against him there."

Since Hart could not be brought to justice either in Westminster or in Maryland, Macnemara concluded, he prayed that the king would force him to answer either before the king himself or before such persons as the king might appoint and that such proceedings and examinations be “had and taken” as the king in his great wisdom considered appropriate and that the nature of the case required.<sup>39</sup>

Later, as Hart bitterly complained, Macnemara admitted to his face that he had tried to get him fired.<sup>40</sup>

While he was in England Macnemara might also have violated the secrecy of the lower house.<sup>41</sup> Apparently Hart was referring to Macnemara in his address to both houses at the opening of the assembly on 29 May 1717 when, directing this part of his speech to the delegates, he told them that he was ignorant of their motives when at their session in the summer of 1716 they prepared the bill that made the tax of twelve pence sterling on each hogshead of tobacco exported from the province payable to the governor for the time being rather than to the proprietor.<sup>42</sup> Since Hart had signed the bill, and since Baltimore and Guilford objected to that provision,<sup>43</sup> Hart had to wiggle out of his dilemma the best he could, so he tried to deflect the responsibility to the delegates. In the process he could get in a lick against Macnemara.

Since he had “ever Inviolably preserved the privileges” of the lower house, Hart feebly explained, he would still have remained ignorant of those motives if it had not been for one of the delegates’ own officers. Now he was acquainted with their proceedings through that officer, apparently Macnemara, who had provided “better Information of . . . [that] Affair” to the officials in England than the delegates had thought convenient to provide him in Maryland. Apparently writing more for Baltimore and Guilford than for the delegates, he continued, the “Violent Feavour

which it pleased God to visit” on him during the whole time that bill was being prepared rendered him incapable of “giving . . . [his] usuall & Constant Attendance” in the upper house for the necessary dispatch of business during that session of the assembly. As Baltimore and Guilford had said themselves, his Lordship could never consent with honor to the paying of money that was raised for the support of his government to someone who was acting as his deputy. His Lordship’s liberality had provided such a generous support for the dignity of Hart’s position that it left no room for him to desire any new favors from the assembly.<sup>44</sup>

What the no-longer-secret motives of the delegates were Hart did not explain, but in a message to Baltimore and Guilford at the end of the session the delegates themselves without apology made it clear that their motive was to gain more power over the revenue. It seemed reasonable to them, they told their Lordships, to think that since they had a part in raising the revenue for the support of the government it was also their duty “to take Care of the Application of it.” They had no fear that it would be misapplied.<sup>45</sup>

The members of the upper house, predictably, absolved Hart of all responsibility. They humbly confessed that their zeal for Hart, whom the Catholics were attacking as the leader of the Protestants in the province, carried them further than they otherwise would have gone. They had nothing more to justify themselves than that by accepting the delegates’ suggestion that the whole twelve pence be granted to the governor they were taking care to defray the emerging necessities of the government without using any of Baltimore’s revenue in the province. They made their humble acknowledgments to Baltimore and Guilford for reminding them of the only proper application of that part of Baltimore’s revenue.<sup>46</sup>

When the delegates replied to Hart on 31 May they made it clear that his sus-

pitions of their motives in passing that act of 1716 did not bother them. After assuring him that justice required that they acknowledge his tenderness toward their privileges, they none-too-convincingly expressed their disappointment in whoever carried the tale to London. They were sorry to find themselves “mistaken in the Choice of an Officer who either forgot his duty or wilfully comitted [*sic*] a Breach of it by revealing the secretts” of the lower house, but they were convinced that if the officer had revealed only the truth they had nothing to fear. He could “lay no Crimes to . . . [their] Charge.”<sup>47</sup>

Macnemara returned to Maryland even more insecure than he was when he left. He did not get Hart fired, and he either made Hart his implacable enemy or confirmed him in his implacability.<sup>48</sup> And while the delegates did not show much concern at Hart’s discovering their apparent motive in passing the act of 1716, Macnemara’s revealing their secrets might have helped to turn them against him, too. A year later — in May of 1718 — they were willing to pass an act disbarring him from the practice of law in the province,<sup>49</sup> though here they might simply have gone along with Hart out of expediency.

A second reason for Macnemara’s trip to England in the fall of 1716, according to Hart, was to lobby for the collectorship of Patuxent.<sup>50</sup> Macnemara did not get that job, but even though Hart warned Maurice Birchfield, the surveyor general of customs,<sup>51</sup> not to appoint him collector,<sup>52</sup> in the summer of 1717 Hart himself, on the order of Baltimore and Guilford, appointed Macnemara naval officer of Patuxent.<sup>53</sup>

If Hart had had any choice he was not likely to appoint Macnemara, one of his greatest enemies — the other was Charles Carroll —, to *anything*. The only explanation for his appointing Macnemara, whose “Character Principles in Religion [and]

Loyalty & Affection to . . . the King & his most August Family” Hart and his council had already questioned<sup>54</sup> and who, as Hart already must have known, had tried to get him fired as governor, to a position that carried both responsibility and income is that Baltimore and Guilford had ordered him to make that appointment.<sup>55</sup>

Two pieces of evidence, while not explicit, support this probability. First, on 28 April 1718 the delegates told Hart that Macnemara had become especially proud and turbulent since he had had “the Oppertunity [*sic*] to Insinuate Himself into their Lordship’s Good graces,”<sup>56</sup> and, second, in a letter to Macnemara dated 4 February 1717/18 Baltimore and Guilford told him that they were “sorry to hear that the Obligations laid on . . . [him] by the hands of” their governor in the naval office of Patuxent had not had the effect that they had hoped for but that Macnemara either by himself or by contriving with others continued to carry on the old animosity he had against Hart by entering into as many new schemes and projects as he could to blemish Hart’s reputation.<sup>57</sup>

Apparently Baltimore and Guilford were trying to buy Macnemara off, but if they were they did not know their man. Their disappointment in him was not so great that they would fire him, however, and he remained naval officer of Patuxent until his death.<sup>58</sup>

Birchfield was already using Macnemara as an attorney to try to collect debts that Marylanders owed to merchants in England who had gone bankrupt still owing duties on tobacco imported into England.<sup>59</sup> The recovery of the debts of the Marylanders would help to reimburse the king for the loss of those revenues.

Macnemara’s acting for Birchfield was not likely to improve his popularity among the powerful. In May of 1714 Macnemara brought 113 actions for those debts,<sup>60</sup> and while most of the defendants were quite ordinary people, some of them



were very prominent. In January of 1716/17, when Hart and Young continued the cases, Thomas Brooke was the ranking member of the council and therefore of the upper house, a former justice of Calvert County and of the provincial court, a former deputy secretary and a former commissary general.<sup>61</sup> William Bladen was attorney general, surveyor and searcher of Annapolis, naval officer of Annapolis, and commissary and judge of probate, and earlier he had been clerk of the lower house, clerk of St. Mary's county, clerk of the council, clerk of the upper house, clerk of the prerogative office, principal secretary, deputy auditor and surveyor general, clerk of the high court of appeals, clerk of indictments of Prince George's County, deputy collector of Annapolis, and register of the vice-admiralty courts of the Eastern Shore and of the Western Shore. He had also been, and possibly still was, register of the free school in Annapolis.<sup>62</sup> Major Josiah Wilson was a delegate to the lower house from Prince George's County,<sup>63</sup> a former sheriff of Prince George's County,<sup>64</sup> then of Anne Arundel County<sup>65</sup> and after that of Prince George's County again,<sup>66</sup> and one of the original aldermen of Annapolis.<sup>67</sup> Matthew Vanderheyden was the second-ranking justice of Cecil County,<sup>68</sup> a former chief justice of the county,<sup>69</sup> a delegate to the lower house,<sup>70</sup> and a former naval officer of Cecil County.<sup>71</sup> Thomas Gassaway was the lowest-ranking quorum justice of Anne Arundel County<sup>72</sup> and a former sheriff of the county.<sup>73</sup> Abraham Birkhead was a former non-quorum justice of Anne Arundel County.<sup>74</sup> John Gresham Jr. was twice a former sheriff of Anne Arundel County,<sup>75</sup> would be sheriff again,<sup>76</sup> and since he would be mayor of Annapolis by 4 December 1717<sup>77</sup> must have been an alderman by January of 1716/17 and had to have been a common-councilman before that. John Smith was a former sheriff of Calvert County.<sup>78</sup> John Brown later became collector of Pocomoke,<sup>79</sup> and Joseph Browne later became riding surveyor of Pocomoke.<sup>80</sup>

The cases dragged on, either because Hart was obstructive, as Birchfield and the Commissioners of the Customs charged<sup>81</sup> or because Macnemara was in no hurry to conclude them. The more they dragged on the more it would cost the defendants in fees. In the middle of the prosecutions he left the province,<sup>82</sup> and on 10 January 1716/17 Hart and Samuel Young sitting in chancery<sup>83</sup> continued to the next court fifty-six of the cases because Macnemara, “in whose hands the . . . Papers & Instructions relating to these causes” remained, was in England.<sup>84</sup>

And before the cases were finished Macnemara went to England again, his third trip to England since his arrival in Maryland in 1703,<sup>85</sup> leaving sometime after the middle of July of 1718 and returning sometime before August of 1719.<sup>86</sup> On 14 October 1718 Hart continued thirteen of the cases because Macnemara had “fled from Justice,” and neither he nor any other attorney was in court to represent Birchfield.<sup>87</sup>

The assembly supported the defendants and blamed Macnemara, a man, the members of the upper house charged later in the dispute and after Macnemara’s death, of pernicious principles and practices.<sup>88</sup> On 5 May 1718 the Committee of Aggrievances of the lower house, after meeting at Mary Dodd’s house in Annapolis,<sup>89</sup> presented it as a grievance that many of the inhabitants of the province had been subpoenaed to appear in the high court of chancery to answer the complaints of Maurice Birchfield that they were indebted to John Goodwin and other merchants in London before Birchfield had demanded payment of the debts and even before they had any notice of the claims. Some of them had never had any dealings with the merchants to whom they were supposed to be indebted,<sup>90</sup> while others were “Large Creditors instead of Debtors.” Many of those who were debtors owed, by the merchants’ own accounts, “very small and Trifling Sums short of Six pounds which

by the Laws of the land . . . [were] not cognizable in the Chancery court . . . .”<sup>91</sup>

Being forced to respond to those suits in the chancery court resulted not only in great expense but also in the defendants’ having to neglect their business while attending court. Even when the chancellor dismissed the suits after “hearing the greatness of their Oppressions by such severe” prosecutions<sup>92</sup> they could not recover their costs against Birchfield because he was acting on behalf of the Crown. They might have been spared their trouble and charges if Birchfield or his attorney “had not Proceeded after so uncommon and immethodical a manner,” without either demanding payment of the debts or giving notice of the actions. Several of the defendants had sworn that neither Birchfield nor anyone else had ever asked them about the debts until they were served with the subpoenas to answer the suits, and they had declared that Birchfield “might have had the utmost Satisfaccon they were able to give” if he had only subpoenaed them to testify or had requested payment of the debts without putting them to unnecessary expense by bringing the actions against them.

Thus according to the Committee of Aggrievances Birchfield could have found out everything he needed to know, and might even have collected some of the debts, without bringing the actions against the defendants. Requesting payment or subpoenaing the debtors to give depositions would have been sufficient.

It was the humble opinion of the Committee, the members concluded, that Birchfield “or others Concerned” in the prosecutions had misused his Majesty’s name and authority to oppress his good subjects in the province and that the king could never have intended that the authority he had given Birchfield and those others should ever be used in that way.<sup>93</sup>

The “others Concerned,” of course, were one man — Thomas Macnemara.

The next morning — 6 May 1718 — the delegates accepted the report, sent it

on to the upper house, and asked the members of the upper house whether they agreed that Birchfield's actions were a very great grievance and whether they would join the lower house in an address to the king to try to prevent such actions in the future.<sup>94</sup>

The delegates did not get their address to the king. Preoccupied among other things with harassing Macnemara and getting him disbarred from practicing law in the province,<sup>95</sup> the members of the upper house did not respond to the delegates for three days.

The upper house already had another complaint against Macnemara to deal with. On Friday, 2 May, it read the complaint of Captain David Pulsifer against Macnemara for allegedly demanding more fees on Pulsifer's clearing the port of Patuxent than he should have. The upper house sent the complaint to the lower house together with some letters, a copy of Pulsifer's account, and the suggestion that the delegates consider whether Macnemara's action was not an oppression and a discouragement to trade. William Bladen as attorney general had endorsed the account with the note that by "Adding the Parr" — taxing the leakage<sup>96</sup> — Macnemara had over-charged Pulsifer £0.15.8 current money and that he had denied Pulsifer the drawback on liquors to the value of £1.10.6 current money.<sup>97</sup>

In a message to the upper house the next afternoon the delegates agreed that if the facts in the complaint were true Macnemara's action was "a great Oppression and Discouragement to Trade" and, ignoring the alleged denial of the drawback, suggested that Pulsifer could be relieved of the over-charge of £0.15.8 current money by prosecuting Macnemara on the act of assembly that limited the fees of the naval officers.<sup>98</sup>

That same afternoon the upper house ordered that Adam Bell, who had acted

for Macnemara as naval officer of Patuxent,<sup>99</sup> be sent for immediately by special messenger, since he had been ordered to appear before the House to answer Pulsifer's complaint but had left town.<sup>100</sup>

Before Bell appeared before the upper house Macnemara had to appear there to answer for his behavior as an attorney in the chancery court. When he appeared on the fifth — the same day on which the Committee of Aggrievances decided that Birchfield's suits against the merchants were oppressive — he refused to make the sort of "Due Submission" to get himself reinstated as an attorney in the chancery court that Hart could demand only because he misrepresented his instructions from Baltimore and Guilford, and four of the seven provincial justices, all four of whom were members of the council and the upper house,<sup>101</sup> presented their long attack on Macnemara and threatened to resign if so turbulent and insolent a person was permitted to continue to practice before the provincial court.<sup>102</sup> Not only was Macnemara not readmitted as an attorney in the chancery court, but two days later the upper house recommended that the delegates bring in a bill to disbar him in the entire province.<sup>103</sup>

On 7 May Bell appeared before the upper house. Hart informed him of the injustice that he had done to Captain Pulsifer by charging him exorbitant fees and by not allowing him the twenty percent leakage of liquor that the law provided.<sup>104</sup> Then the upper house ordered Bell to pay George Valentine, its serjeant-at-arms, forty shillings current money — for four days at ten shillings per day — "for his Fees for fetching" Bell to appear for his contempt.

Finally, though Bell rather than Macnemara was immediately responsible for any injustice that Pulsifer had suffered,<sup>105</sup> the upper house resolved that Macnemara had taken exorbitant fees from Captain Pulsifer and that Pulsifer had "his Remedy

at Law against him.”<sup>106</sup> No doubt the members of the upper house considered Macnemara responsible for the actions of his deputy, but apparently the issue went no further.<sup>107</sup>

Immediately after resolving that Macnemara had taken exorbitant fees from Pulsifer the members of the upper house prepared a message reviewing their grievances against Macnemara, sent it and the papers relating to his appearance before them on the fifth to the lower house, and recommended that the delegates bring in a bill to disbar him as “a Contemner of Authority And a Disturber of the Peace & Tranquility of the Good People” of the province.<sup>108</sup> The delegates responded favorably, and during this session the assembly did disbar Macnemara.<sup>109</sup>

When on 9 May 1718 the members of the upper house finally responded to the delegates about the proposed address to the king on Birchfield’s allegedly oppressive cases they sent along a note in which John Hart informed them that he thought that it would be proper to complain instead to Baltimore and Guilford, who would not fail to report to the king any grievances caused by any of the Crown’s officers or other employees in the province. Beyond that, Hart thought, the information should also be sent to Nathaniel Blakiston, the agent of the province,<sup>110</sup> whose advice and interest would also be useful to their Lordships as well as to the province in removing the grievance and preventing anything like it from happening again in the future.

The members of the upper house agreed with Hart and left it up to the delegates to decide whether it would be proper for the two houses to lay the issue before the conference committee that was already drawing up a representation to Baltimore and Guilford.<sup>111</sup> The delegates did decide to lay the issue before the conference committee, which included the report of the Committee of Aggrievances in the address

to Baltimore and Guilford almost word for word.

Because Birchfield was an officer of the Crown, the conferees added, the assembly had been very reluctant to encourage the damnified people to seek any remedy against him for the damages they had sustained by the rigor of his proceedings against them or to pass any law to remedy the grievance.

Then the conferees blamed everything on Macnemara. They were well satisfied that the avaricious and litigious person Birchfield employed as his attorney — Macnemara — was, “for the Sake of Increaseing his ffees,” the chief cause of Birchfield’s rigorous and unjustifiable proceedings. They hoped that their Lordships would do whatever in their great wisdom they thought proper to get the king to caution his officers against oppressing his subjects in the future and thus wasting his money prosecuting “needless Suites at Law without any Cause or [for] Very Trifleing Sumes for [the] recovery of which the Laws of the Land” provided a remedy by a warrant from a justice of the peace.<sup>112</sup>

Both houses approved of the address,<sup>113</sup> and in their response, which they included in the same letter by which they disallowed the law disbarring Macnemara and which Hart laid before the assembly at the opening of the next session on 14 May 1719, Baltimore and Guilford assured the assembly that they were much concerned “to hear that Rigorous and Oppressive Suits” contrary to the laws of the province had been brought against the inhabitants. They had had “such great experience of the Wisdome and Justice” of his Majesty’s administration, however, that they were sure that he could never encourage such proceedings. In order that the assembly’s complaint might be represented correctly, they had forwarded its address to the Commissioners of Customs.<sup>114</sup>

That was a distinctly lukewarm endorsement of the assembly’s concerns.

Apparently Baltimore and Guilford were not anxious to get involved in any dispute with Maurice Birchfield and the Crown. Guilford would not try to see the Commissioners of Customs himself but rather would let the address speak for itself.

On 9 September 1718 Guilford did send the assembly's address to the Commissioners of Customs, who were not sympathetic. Birchfield had got to them first. In a letter to Hart that was dated 9 April 1718 and that Hart entered into the records of the chancery court on 14 October 1718 the Commissioners informed him that they had received his letter of 1 December 1717 with a copy of the proceedings against two navigation bonds<sup>115</sup> and his request for the opinion of some able counsel about some doubts arising in those proceedings before he proceeded to judgment. Before they received his letter, however, they had received from Birchfield information about his cases with some queries about them. They had had their solicitor lay the cases before the attorney general, and they had sent Birchfield the attorney general's opinion on each query with orders that he communicate those opinions to Hart. Therefore they referred Hart to Birchfield for anything he needed to know. They did not doubt that there would be no more obstruction in bringing these cases, which had been depending for so long, "to a Speedy Conclusion by doing Justice to the Crowne."<sup>116</sup>

The letter of the Commissioners of Customs makes it clear that they were siding with Birchfield and that they believed that Hart had been obstructive. Hart, on the defensive, tried to turn the focus to Birchfield, who, he told the five other men who were present,<sup>117</sup> had never informed him of the opinions of the attorney general, as the Commissioners of Customs had ordered him to do. Nor had he received those opinions from any other source.<sup>118</sup>

In their response to Guilford the Commissioners of Customs were even more



clear in their accusation that Hart had obstructed Birchfield's prosecutions. In a letter dated 13 December 1718 they informed him that after reviewing the assembly's allegation that Birchfield had imposed hardship on the inhabitants of Maryland by the way he proceeded against several people "who were debtors to Merchants that had fail'd Considerably Indebted to his Majesty for dutys on Tobacco" imported into England, they did not find that Birchfield had done anything more than his duty. By supporting Birchfield, of course, they were also supporting Macnemara.

Then the Commissioners turned the attack against Hart. They took this opportunity, they continued, to inform Guilford that it appeared to them "by Severall Instances" that Hart had obstructed Birchfield in his Majesty's service. Therefore they directed Guilford to order Hart not to obstruct his Majesty's service but rather to assist the customs officers in Maryland in the due performance of their duties, as the law required him to do,<sup>119</sup> and to enforce the laws against illegal trade as well as "for Recovering the money and effects due to his Majesty" in Maryland.<sup>120</sup>

Once the Commissioners of Customs directed them to order Hart to assist the customs officers in Maryland, Baltimore and Guilford had no choice but to pass the order on to Hart. In instructions to Hart dated 23 March 1718/19 they did order him and all of their other officers and ministers in Maryland to assist the king's customs officers, as the law required them to do, "and not in the least to Obstruct his Majesty's Service under the Management of the Commissioners of the Customs," as the Commissioners had complained by their letter, a copy which Baltimore and Guilford included with their letter to Hart.<sup>121</sup>

When on 10 September 1719 Hart showed his council the letter from the Commissioners of Customs and Baltimore's and Guilford's instructions Macnemara was already dead,<sup>122</sup> and Hart's career in Maryland was in a shambles. Probably he could

be excused for suspecting that Birchfield and Macnemara had had a lot to do with producing his plight.

In addition to ordering Hart to co-operate with the officers of the Crown in Maryland, Baltimore and Guilford not only had granted his request to return to England to recover his health and to get away for a while from the “Popish Faction,” but they had also ordered him to leave the province, if possible within three months of his receiving the instructions, and had appointed Thomas Brooke, the ranking member of the council, to administer the government during his absence. They also ordered that he should receive the tax of three pence per hogshead of tobacco exported from the province for as long as he had the title of governor whether he had left the province or not, but they required him to recommend to the assembly that the three pence per ton “upon the Burthen of Ships and Vessells Tradeing into the Province” be used for the “better Support and Dignity” of the member of the council who would administer the government after Hart returned to England. Hart thought that he should have that money, but Baltimore and Guilford ordered him to prorogue the assembly until April of 1720, which might mean that he would have to leave the province before he had time to get the assembly to agree that he should have it.<sup>123</sup>

After complaining about these instructions and getting the advice of his council on them<sup>124</sup> Hart turned to the letter of the Commissioners of Customs. First he distanced himself from the assembly’s complaints about Birchfield. Since he was in no way concerned with the assembly’s address to Baltimore and Guilford, he told his council, the assembly would have to answer about that for itself.

Then Hart denied that he had ever obstructed Birchfield in the execution of his office. Rather, he insisted, he had always aided and assisted the customs officers in the discharge of their duties, just as the law required him to do. He was in no way

concerned with recovering money and effects due to his Majesty in Maryland except as a judge in equity. That trust he had discharged “According to the Dictates of his Conscience” and to the best of his ability, and for his performance in that job he had to answer only to God and to the king. He had always tried “to do Impartiall Justice, according to the Strict Letter & Tenor of his Oath without Fear, Favour, or Affection.”

The charge against him, Hart continued, was so general that he could not give a specific answer to it. Always ready to blame the Catholics for his problems, when he got to England he would show that Birchfield could have no motive for making such a complaint “Unless he thereby Intended to Suppress him, the better to Countenance his Factious, Popish, Favourites.” He would also show what personal offers of friendship Birchfield had made him if he “wou’d give way to the Illegall & Insolent Proceedings of his Minions.” Birchfield’s “minion” must have been Macnemara. Hart would show further that he had never given Birchfield any advice about customs except as his Majesty had instructed him to do. Far from being a crime, he thought, that had been his indispensable duty.

However little regard Baltimore and Guilford had for him, Hart could not fail to observe, he was sorry that they would put “such a Slurr . . . upon his Character without ever Enquiring into Particulars” and that they would condemn his conduct without giving him a chance to defend himself.<sup>125</sup> Such a precedent, he thought, might have dangerous consequences to whoever succeeded him as governor.<sup>126</sup>

In one of his moods of self-pity, however, Hart had it wrong. Baltimore and Guilford had not condemned him unheard. They had not condemned him at all. They had made no charges against him. They had never said that they believed Birchfield’s complaints against him but told him only that in the future he should not

do what Birchfield had complained that he had done in the past. To protect Baltimore's possession of the province, they could do no less.

Sometime between 11 August and 8 September 1719 Macnemara died,<sup>127</sup> but Birchfield's cases dragged on for almost a year after his death. When on 9 April 1720 Hart and the upper house sent the letter from the Commissioners of Customs to the delegates, along with Baltimore's and Guilford's order of 26 February 1718/19 that he restore Macnemara to his practice in chancery<sup>128</sup> and his own speech to the council on his resigning as chancellor on 27 February 1719/20,<sup>129</sup> Hart tried again to distance himself from the conflict over the cases. In a letter to the Speaker of the lower house, Robert Ungle,<sup>130</sup> he told the delegates, as he had told the members of his council earlier, that since he had had no part in preparing the address to Baltimore and Guilford concerning the grievances of Marylanders against Birchfield, and therefore was in no way responsible for it, it was up to the assembly to respond to the Commissioners' reaction to that address.

Hart could not help remarking, however, that he was very ill-treated in the Commissioners' letter as a result of the accusations of a gentleman who had "already been but too much a favourer of a Faction" in the province. Since Hart writes as though the favorer of faction was still alive, and since Macnemara had died sometime before 8 September 1719,<sup>131</sup> Hart must have been referring here to Charles Carroll.<sup>132</sup> That that gentleman was a favorer of faction had been made apparent to the Commissioners by a member of the lower house, Mr. Rousby.<sup>133</sup> Hart could make this claim from his own knowledge, since he had seconded John Rousby's remonstrance to the Commissioners with letter of his own to his friends. The success of those letters was "Evidently known."

Hart could say that he had been ill-treated, he continued, because when the assembly complained of grievances the Commissioners used the occasion to question his character. He thanked God, however, that they could do that “only on Misrepresentation and in Generall terms.”<sup>134</sup> Yet the conclusion of the Commissioners’ letter seemed to be leveled directly at his administration in the chancery court, since it was only as a judge in equity that he was “Concerned in the recovery of the money and the Effects due to his Majesty” in the province. In his conscience he was answerable to God alone, and he defied his most invidious enemies to prove either partiality or corruption against him. Surely he would have made his “Court with a very ill grace to so just and Good a King” as his Majesty was if he had “given up the Property of his Subjects meerly [*sic*] because his Name was Made use of by those employed under him.”

The criticism of the Commissioners, however, was the less important of the two reasons why Hart had resigned as chancellor. What more immediately compelled him to resign, he concluded, was Baltimore’s and Guilford’s ordering him to restore Thomas Macnemara to his practice in chancery. When he found that he could no longer maintain the honor and dignity of the chancery, he voluntarily and cheerfully gave up that position in order to preserve his integrity, which no power on earth could remove from him.<sup>135</sup>

The members of the upper house thought that the proper response to the failure of the assembly’s address to Baltimore and Guilford was another address. Since in its recent message the assembly had not stated the grievance against Birchfield intelligibly enough to give either their Lordships or the Commissioners of Customs a clear understanding of it, they suggested, in a message on 9 April, that the two houses should review that earlier address and wherever they had failed to state their case

clearly enough they supply additional information.<sup>136</sup>

The sluggish response of the delegates to this message might make it appear that they were neither as sympathetic toward the defendants in Birchfield's actions as they had to pretend to be nor terribly anxious to defend John Hart, of whom by 1720 they had had more than enough.<sup>137</sup>

They had reviewed the recent address to their Lordships, the delegates finally informed the upper house on 15 April, and had concluded that the grievance had been appropriately explained. They were surprised that the Commissioners of Customs would countenance Birchfield's actions rather than redress the hardships about which the assembly had complained. They were even more amazed that the commissioners should charge Hart with delaying Birchfield's proceedings. It was the opinion of the delegates as well as the certain knowledge of one of them, whom the Commissioners of Customs had employed "in some of the Affairs" in Maryland, that Hart had been "very Assiduous and Zealous in Promoteing and Expediting the Affairs of the Crown."<sup>138</sup>

The delegates had to express their support for both the defendants and for Hart, but they did not suggest any further course of action.

The members of the upper house were also dilatory enough to make it appear that they were not as enthusiastic as they had to pretend to be. Quite possibly they too were caught between their concern for the defendants, of whom the ranking member of the council, Thomas Brooke, was one,<sup>139</sup> and disgust with Hart, though they did continue to support him publicly through the remainder of his career in Maryland.

On 19 April the upper house responded to the delegates' message of the fifteenth. They were as surprised as the delegates were, the members of the upper house assured them, of the effect of their address to Baltimore and Guilford. Since

the grievances that the assembly had complained of had not been remedied, those responsible for them would be encouraged by the Commissioners' approval of their conduct and by their providing the aggressors the pleasure of having Hart's impartial conduct as chancellor reproved. Since the province had had no relief, and since the problem therefore still continued, the members of the upper house thought that it was necessary to consider the matter further and to try to take appropriate measures to make the address to Baltimore and Guilford more effective.

The delegates would find on inspecting the address, the members of the upper house continued, that it justly explained those grievances that the delegates themselves still found to be real. They could only suppose that there had "been some defect in the Presentation or Solicitation" of that address, and they proposed therefore that the assembly make use of Hart's intended voyage to England<sup>140</sup> as a most favorable opportunity for a more effective presentation of the grievances, provided that Hart was willing to act, in order to prevent similar impositions in the future. Finally, they suggested that the delegates join them in requesting Hart to assist them in whatever ways the delegates might find necessary for the good of the province.<sup>141</sup>

On the morning of 19 April, before they rejected the proposal of the upper house to renew their protest through Hart, the delegates responded to Hart's letter of 9 April to the Speaker with a message in which they continued the conventional flattery of political discourse. After the Speaker communicated to them his letter of the ninth, the delegates told Hart and the upper house, they had inspected the assembly's address to Baltimore and Guilford concerning the many vexatious prosecutions of the inhabitants of the province "as Debtors or Supposed Debtors to the Crown" and had concluded that there were just reasons for that address. They were extremely surprised and sorry to find that the Commissioners of Customs had not considered the

hardships of which the assembly complained but instead had justified Birchfield's proceedings and had accused Hart of retarding Birchfield's performance as surveyor general of customs. The delegates believed that an examination of the docket of the chancery court would show that Hart in no way deserved those criticisms.

Adopting some of Hart's own language from his letter to the Speaker ten days earlier,<sup>142</sup> the delegates assured him and the upper house that they were so well satisfied with his integrity and justice as chancellor that even the most invidious of his enemies could not prove "the least Charge of Partiality or Corruption," and they were sorry that because of unjust representations to their Lordships Hart had resigned as chancellor. When they considered the just reasons that he had provided in his speech to his council, however, they could not but applaud his prudence in giving up his interest in order to preserve his integrity, which they believed no power on earth could remove from him.<sup>143</sup>

That afternoon the delegates rejected the proposal that the assembly continue its protest through Hart. First they expressed their hearty thanks to the members of the upper house for suggesting to them the opportunity they were likely to have to present their recent grievance with great clearness to the Commissioners of Customs. Since they had been credibly informed that the debts due to the Crown on which the actions arose had been sold to private persons, however, and since Thomas Macne-mara, whom Maurice Birchfield had used as an attorney in those cases, had died, the delegates humbly believed that the causes of the problems had been largely removed. Therefore they were not inclined to make any further complaint until another problem arose.<sup>144</sup>

The members of the upper house did not like that at all. The next day — 20 April 1720 — they informed the delegates that they were glad that they had proposed



the means by which the assembly might be able to represent with great clearness the grievances about which it had complained. They were obliged by ties of duty to their country and “for the Sake of preserving a Concurrence of Sentiments” with the delegates to inform them of their objections to the delegates’ reasons for declining<sup>145</sup> any further representation of the grievances that the country had already suffered until they might happen to be repeated.

By their letter to their Lordships, the members of the upper house believed, the Commissioners of Customs were censuring the assembly for partiality in considering Birchfield’s proceedings grievous to the country, since when the Commissioners examined his conduct they did not find that he had done any more than his duty. Since the members of the upper house had reason to believe that the Commissioners’ conclusion resulted from a lack of clarity in the assembly’s representation to them, they all the more earnestly pressed the delegates to concur with them in a matter of such great importance to the welfare of the people of the province. They believed that it was much easier and better to prevent a grievance than to have to seek redress after they had suffered it.

The members of the upper house were not convinced that the Crown had sold the debts for which Macnemara and Birchfield were suing, but even if they had been sold they could not conceive that either the sale of the debts or Macnemara’s death<sup>146</sup> could be any security against similar grievances in the future. Undoubtedly the people who had purchased the debts, if anyone had, would try very hard to recover them, and the members of the upper house had too much reason to fear that those people would readily find someone “whose Principles and Practices . . . [might] be as pernicious” as Macnemara’s were to prosecute them.

The matter of the debts was of even greater concern to the province than it

otherwise would have been, the members of the upper house believed, because the Commissioners seemed to charge Hart with obstructing the collection of the debts and therefore obstructing his Majesty's service. In those cases, however, Hart had acted only as a judge in chancery, and the members of the upper house considered "it a Most fatal Enemy to Impartial Justice" if any power could influence the consciences of judges to conform with any interest whatever. The consequences of such a situation, the members of the upper house concluded, deserved the delegates' consideration.<sup>147</sup>

The next morning — 21 April 1720 — the delegates changed their minds about pursuing the grievance. They voted by a majority to continue to pursue it, and in their message to the upper house they made it clear that they had objected not so much to pursuing the grievance further as to pursuing it through John Hart. They were ready, they informed the upper house, to make a further representation to their agent, whose duty, they understood, was to handle such issues for them. They suggested that the gentlemen who were to be appointed to draw up the representation get to it immediately.<sup>148</sup> The session would end the next day.<sup>149</sup>

The delegates did appoint four of their members<sup>150</sup> to the committee to draw up the new representation, but how many or whom the upper house appointed does not appear in the record. That same day the committee met, but it did not draw up any representation. Led no doubt by the members from the upper house, it recommended instead that John Hart rather than Nathaniel Blakiston take the lead in protesting Birchfield's prosecutions and the Commissioners' response to the assembly's earlier representation. The Speaker of the lower house should write a letter to the colonial agent directing him to communicate to Hart all the papers that had been sent to him concerning Birchfield's suits and to assist Hart in the matter.<sup>151</sup>

If the assembly was going to pursue its complaint through John Hart rather than through Nathaniel Blakiston, whom Hart had earlier recommended as an appropriate person to pursue the protest,<sup>152</sup> it would have to have Hart's permission. The refusal of such permission was unlikely, but still the committee also drew up for the consideration of the two houses a joint message to him that, considering Hart's anxiety to remain involved in the affairs of the province,<sup>153</sup> was more flattering than it would have had to be.

The great regard that Hart had expressed for the welfare of the province in communicating to the assembly the letter from the Commissioners of Customs, as well as the whole course of Hart's administration, the members of the committee began, emboldened them to make their humble address to him for his assistance in their protest against Birchfield and Macnemara. It appeared plainly to them that they had the most legitimate reasons for complaining of the rigorous and unjustifiable proceedings of Birchfield and his substitute, who had acted in his Majesty's name and by color of his authority but to the prejudice of his subjects. Yet because of the lack of a clear representation of the case, the Commissioners of the Customs appeared to justify the injurious oppressors, and the innocent sufferers were accused by implication of making "groundless Complaints and being Clamorous."

The members of the committee had reason to be discouraged about the possibility of success of any future applications for redress if they failed in the protest that they would make on this occasion with Hart's kind assistance, which they earnestly implored. They would then have to consider themselves "under an unhappy necessity of Submitting to the Dictates" of any of the king's officials in England no matter how misinformed or deceived they might be about the province and the issues that arose there.

The members of the committee did, however, hope for better things. Specifically they hoped that if Hart would refer to the assembly's earlier representation of the case, to the papers in the hands of Nathaniel Blakiston, whose assistance they did not doubt, and to the abstracts from the chancery dockets he would be able to convince all of those who questioned the assembly's candor in its earlier representation of the justice of its case.

By their experience with Hart's good inclinations toward Maryland in other affairs, the members of the committee concluded, they did not doubt that in this issue he would add one more obligation to the many others they owed him, for which they "were ever bound to pray" for his prosperity.<sup>154</sup>

Thus the conference committee was proposing exactly what a majority of the delegates did *not* want. They did want John Hart out of the province as soon as possible,<sup>155</sup> and they wanted as little as possible to do with him after he left.

When the committee presented its report the next morning — 22 April, the last day of the session —, the delegates immediately considered it, voted by a majority to reject it, and informed the upper house that they could not concur with the report because it was contrary to their vote of the previous day.<sup>156</sup>

Since the delegates voted only by a majority rather than unanimously not to accept the report of the conference committee, the members of the committee were not entirely foolish in making their proposals. Hart still did have some support in the lower house, and the members of the committee must have had reason to suspect that others could be persuaded.

The members of the upper house, enamored with John Hart to the bitter end or at least pretending to be — they too would soon be quit of him and would have to worry about him no more —, expressed their disappointment. It was with great con-

cern to them, they informed the delegates with something less than complete candor, that they seemed to reject the address to Hart that the conference appointed for that purpose had prepared. Of course the assembly had not appointed the conference committee to draw up an address to Hart but rather to the colonial agent, Nathaniel Blakiston, and the delegates had not *seemed* to reject the report: they had rejected it flat out.

The members of the upper house believed that the address to Hart would have been of great service to the province, since no man was more fit to negotiate the issue of the debts than Hart, who, they believed, was better informed about those grievances than they could suppose any other person was. Since the delegates had rejected the address without giving any particular cause, a cause with which if it was reasonable they might have agreed, they contented themselves with having discharged their duty to their country and left it to the delegates to consider how far they had discharged theirs.<sup>157</sup>

Surely after all that had happened during this session of the assembly<sup>158</sup> the members of the upper house must have known that the reason the delegates rejected the proposed address of the conference committee was that they did not want anything more to do with Hart than they had to. That, however, was probably a reason that the members of the upper house would not have accepted, since, having to support Hart while he was among them, they would not have considered it reasonable.

By the time these last exchanges occurred Thomas Macnemara was dead, but his spirit was always present. And when on 20 July 1720 William Holland, sitting alone in chancery,<sup>159</sup> finally dismissed twenty-seven of Birchfield's cases because they had not been prosecuted, his criticisms of Birchfield must have been aimed

equally — or even more especially — at the dead attorney.

It had been more than twenty-five months since the assembly passed the act to limit the continuance of cases in the courts of the province,<sup>160</sup> Holland began, and the defendants had been burdened every year with the charge of the continuances even though through their attorneys they had always been ready to enter their defenses. No person appeared to prosecute the cases, nor did it appear to Holland that there ever would be any further prosecution of them.

The defendants' claims that they had always been ready to give entire satisfaction to the complainant had to be accepted, since the complainant did not deny it, and thus there was not the least reason to put them to the expense of a suit in chancery and to require them "to Comply with Everything that could according to the Strict Rules of Justice be Required" of them. The defendants had been put to unnecessary charges and trouble without having been guilty of anything that could in any way justify that expense and trouble merely because of Birchfield's rigorous presumption that by using Crown's name he might be able to put the defendants to some expense, without being subject to any costs himself, if they would not comply with his demands even though he was prosecuting them without cause.

Birchfield had failed to give the defendants any notice of his claims against them, which equity, reason, and justice required him to do, before beginning the suits. That omission could be of no advantage to the Crown, nor could the court accept that Birchfield, just because of his office or his pretense of being an agent of the Crown, should oppress people by commencing groundless suits or be screened from costs himself when he failed to prosecute them.

It seemed probable to the court, Holland concluded, that actually the Crown was not much concerned in these prosecutions, since Birchfield did not employ the

attorney general to prosecute them, as had always been usual in such cases, but had used a private practitioner instead.

Therefore Holland dismissed the cases, with costs against Birchfield.<sup>161</sup>

Holland might have been too harsh on Birchfield for using Macnemara rather than the attorney general to prosecute his cases. Not only was William Bladen one of the defendants Birchfield was suing,<sup>162</sup> but as a man constantly on the make<sup>163</sup> he had to remain in the good graces of as many prominent people as he could. He was unlikely to be very enthusiastic about prosecuting these people, many of whom were too prominent to take a chance on offending.

According to Macnemara Bladen was never anxious to prosecute the powerful to begin with. While he was in England in 1716 and 1717 he complained to the king that Hart had prevented Bladen from prosecuting Hart himself and his partners for smuggling wine, raisins, sugar, Florence oil, and corks in their own vessel in May of 1715.<sup>164</sup> Birchfield's using Macnemara to prosecute his cases might be evidence to that he trusted Macnemara more than he trusted Bladen.

Finally, Birchfield might have wanted the most competent lawyer he could find to prosecute his cases, and Macnemara was a far more competent attorney than Bladen was.<sup>165</sup>

Already anathema to the newly emerged ruling class of the province, Macnemara did nothing to increase its love for him with his willingness to prosecute even prominent people for the Crown. Of course people were using lawyers to sue other people all the time in colonial Maryland, and those lawyers did not suffer any notable ostracism. Suing on behalf of the king rather than as counsel for another planter, however, was an entirely different game.

Yet as much as the ruling class despised Macnemara and did nothing to hide its contempt for him, he had his own strong following. When the delegates made him the clerk of the lower house on 22 June 1714 he might already have been one of the common-councilmen of Annapolis, and when Hart was forced to appoint him naval officer of Patuxent in the summer of 1717 he had already been an alderman and the mayor of that city and was again an alderman.<sup>166</sup> So here was a man whom the Protestant ruling class of the province had always feared but who now, because the mayor, recorder, and aldermen were justices of the peace of Annapolis,<sup>167</sup> had acquired substantial judicial as well as administrative power. His success in the politics of Annapolis must reveal a political and religious division that would terrify that ruling class.

To become a member of the common council, an alderman, and the mayor of Annapolis Macnemara had to get votes. By the charter of 22 November 1708 Governor John Seymour named the first mayor, the recorder, and the aldermen, who elected the ten original members of the common council from among “the most sufficient inhabitants” of the city. After that the “free Voters” of Annapolis filled vacancies on the common council from among the “Inhabitants and freeholders” of the city. Since the mayor and remaining aldermen filled vacancies among the aldermen from among the common council, and since the mayor, recorder, aldermen, and common council elected the mayor from among the aldermen — except when the mayor died, resigned, or was removed, in which case the aldermen elected a successor —, Macnemara had to have the support of the average voters but also of several of the most prominent men in the city.<sup>168</sup>

Since Macnemara was mayor of Annapolis in the summer of 1716, and since the mayor, recorder, aldermen, and common-councilmen elected the mayor on the



feast day of St. Michael — 29 September<sup>169</sup> —, if he was elected in a regular election he must have been elected on 29 September 1715. Before that he had to have been an alderman, and before that a member of the common council, but it is impossible to know just when he assumed those positions. Common-councilmen and aldermen were elected to fill vacancies, and there is no way to be sure when the vacancies occurred.

And when Macnemara was no longer mayor of Annapolis he did not simply disappear, as his enemies obviously would have preferred. In August of 1717 he was still an alderman,<sup>170</sup> and therefore he must have gone back to that position immediately on leaving the office of mayor, just as other mayors did later.<sup>171</sup> It appears likely that he was still an alderman of Annapolis when he died sometime between 11 August and 8 September 1719.<sup>172</sup>

Macnemara's enemies were not pleased with his performance as mayor. When in June of 1719 the assembly passed its second act disbarring him from the practice of law in the province,<sup>173</sup> one of its accusations against him was that when several people were tried at a special court of oyer and terminer in Annapolis on 10 July 1716 “for Drinking the Pretender’s Health,” for “audaciously Cursing his Sacred Majesty King George,” and for firing the guns of Annapolis “on the supposed Birth Day of the Pretender” — 10 June 1716<sup>174</sup> — he defended some of them and “so warmly espoused their Cause, as even to dare that Court to proceed against them” even though when the guns were fired Hart was absent from the province and therefore Macnemara, “being then Mayor” of Annapolis, had the “Duty as Chief Magistrate in the place” to issue his warrant for discovering and prosecuting the culprits. Macnemara, according to the assembly, not only totally failed to do that but instead “Espoused their Cause” in the way it had already alleged.<sup>175</sup>

The next month Macnemara had to deal with what appears to have been a very minor Catholic scare that was stirred up by one man. On 15 August John Smith, a twenty-six-year old<sup>176</sup> carpenter and a constable of Annapolis,<sup>177</sup> gave a deposition before Macnemara, who was still mayor of the city,<sup>178</sup> in which he swore that “About two hours before the break of day” on 14 August Richard Evans, a glover and an innholder in Annapolis,<sup>179</sup> went to Smith’s house in Annapolis and “Called to him Very Loudly” that “the Papists had risen,” that “they had abus’d him . . . for standing up for his king and Country,” and that he “had the Governours Orders to Raise the Town upon them.” Therefore in the name of the proprietor he commanded Smith to aid and assist him. Smith was so surprised that he thought about getting James Sweetlove, who was in Smith’s house, “to beat the Drum and Call the people to Armes.” Whether he actually did get Sweetlove to beat the drum does not appear, but Evans, according to Smith, went to three or four other houses to arouse the residents in the same way. As a result, a number of men got together, but Smith saw no rising of the Papists.

Macnemara referred Smith’s deposition to the provincial court for September of 1716, where Evans appeared under bond of one hundred pounds current money, which he had given before Macnemara, with John Smith and Richard Young as his sureties of fifty pounds<sup>180</sup> each, to answer to all things that would be objected against him there and to be of good behavior in the meantime.

How Evans responded to Smith’s deposition against him — or even whether the justices gave him a chance to respond — does not appear. After considering the deposition the justices fined Evans five shillings current money and discharged him from the recognizance.<sup>181</sup>

Macnemara's being mayor or even alderman or common-councilman of Annapolis, located in an area in which there was alarming support for the outlawed Richard Clarke before he was hanged on a bill of attainder on 9 April 1708<sup>182</sup> and in which the few Catholics there were enough to keep the Protestants forever on their guard,<sup>183</sup> must have inspired nothing short of panic in the ruling class and its functionaries. The Protestant elite was not so secure that it could ignore the obvious popularity of this charismatic lawyer. The fear must only have intensified when in 1717 Jacob Henderson, the ecclesiastical commissary of the Western Shore, appointed Macnemara his procurator of office<sup>184</sup> and thus increased his prestige still further.

The response of the Protestant authority to Macnemara's increasing prestige was to continue to try to neutralize him if it could not destroy him, and the harassment that had begun soon after he arrived in the province would continue for the rest of his life.

## *Thomas Macnemara's Offices*

Citations in "Respectability"

See also Donnell M. Owing *His Lordship's Patronage*

Position	Dates
Attorney for Maurice Birchfield, surveyor general of customs	ca. May 1714 to death
Clerk, Lower House	22 June 1714 to 28 May 1717
Common Council, Annapolis	Before 29 September 1715
Alderman, Annapolis	Before 29 September 1715
Mayor, Annapolis	29 September 1715 to 29 September 1716
Alderman, Annapolis (again)	29 September 1716 to death?
Naval Officer of Patuxent	Summer 1717 to death
Procurator of office for Jacob Henderson, ecclesiastical commissary of Western Shore	4 December 1717 to death

## *Defendants in Birchfield-Macnemara Suits*

John Allen	John Gresham	Aron Rawlings
James Ayeling	Samuel Griffith Jr.	Daniel Rawlings
Isaac Baker	Samuel Griffith	Robert Reaves
Anthony Bale	Julian Guibert	Notley Rozier
Richard Bennett	James Haddock (ex. Wm. Barton)	James Saunders
William Billingsley	Adam Head	Edward Scott
Abraham Birkhead	Philemon Hemsley	Joshua Sedgwick
Edward Blackburne	Darby Hernly	Peter Sharpe
William Bladen	Michael Higgins	John Sherdomits (?)
Henry Bollers	David Hollen (Heller)	Charles Skinner
Edward Boteler	Cornelius Howard	Clarke Skinner
Katherine Boteler (ex. Henry)	James Howard	Charles Smith
John Brewer	Richard Iams (Jams)	John Smith of Battle Creek
John Brome	Daniel Jenifer (of St. Thomas)	John Smith (Cecil County)
Thomas Brooke	Thomas Johnson	John Smith late sheriff
Joseph Browne	Anne Jones (ex. Richard)	Richard Smith (Captain)
Margarett Browne	James Keech Jr.	Richard Smith
John Carpenter	Patrick Kelly	Thomas Smith
Thomas Carpenter	William Kenton	Robert Sollers
Samuel Chambers	John Lamb	Thomas Spalding
Thomas Cheney	Thomas Larkin	William Spalding
Henry Cox	Hezekiah Linthicum	Thomas Stafford
James Crooke	Anne Lynes	Jane Taney (ex. Thomas)
William Dawkins	James Macclamin	Thomas Taylor
Gilbert Deavour	Thomas Mackally	Thomas Taylor (again?)
James Duke	John Miles	Richart Tucker
John Duvall	Arthur Miller	John Turner
John Easterlin	George Miller	Matthew Vanderheyden
Thomas Edelen	Michael Miller	Robert Wade
James Forward	Henry Mitchell	Thomas Waple
Jonathan Forward	David Morgan	John Watkins
Thomas Frisby	James Mullakin	Benjamin Williams
John Gardiner	John Norris	Joseph Wilson
Richard Gassaway (Galloway)	Thomas Oram	Josiah Wilson
Thomas Gassaway	Robert Owen	George Young Sr.
John Goodwin	Samuel Peele	
John Greaves Sr.	Samuel Peele	
John Greeves Jr.	Amos Peirpoint	
Robert Greeves	Alexander Raccuquest (ex. Anthony Smith)	

## *Chapter 7*

### *Respectability, 1713-1719*

<sup>1</sup> See Chapter 5, “Railroading, 1710-1713,” at Note 123.

<sup>2</sup> See Chapter 1, “Character,” Note 11.

<sup>3</sup> See Text below at Notes 166-172.

<sup>4</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society 1883-1972), XXIX, 350-351, 391-392, 394-395; Donnell M. Owings, *His Lordship’s Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 138.

Macnemara took “the usual Oaths according to Law” and made “the requisite Subscriptions of the Test & Abjuration Oaths” on 22 June 1714. *Md. Arch.*, XXIX, 350-351. He took the oaths again each time he was re-appointed clerk. See Note 8 below.

By the oath of allegiance or obedience the subject swore allegiance to King George; by the oath of abhorrency or supremacy he swore that he abhorred, detested, and abjured the doctrine that a prince who was excommunicated could be deposed or murdered by his subjects and declared that “no foreign Prince, Person, Prelate, State, or Potentate” had any authority in Great Britain; and by the oath of abjuration he swore that he believed that King George was the lawful King of Great Britain, renounced any allegiance to the Stuarts, and swore that he would defend the Protes-

tant succession to the Crown against the Stuarts as well as against any other “traitorous Conspiracies.” By subscribing the Test the subject declared that he did not believe in the doctrine of transubstantiation, that is, the belief that the bread and the wine in the communion service actually became the body and blood of Christ.

<sup>5</sup> For John Hart as Macnemara’s enemy, see Chapter 10, “John Hart’s Vendetta, 1717-1719,” and Chapter 14, “Gone But Not Forgotten, 1720,” after Note 6-11.

<sup>6</sup> John Hart arrived in Maryland on 29 May 1714. Owings, *His Lordship’s Patronage*, p. 120.

<sup>7</sup> *Md. Arch.*, XXIX, 347, 350; Council of Maryland to the Board of Trade, 18 July 1712, The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127 (photocopy in Library of Congress); The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXVII, No. 16; Chapter 6, “Dishonest Enemies, 1712,” at Notes 11-49.

<sup>8</sup> On 26 April 1715 Macnemara was reappointed clerk of the lower house and took the oaths (*Md. Arch.*, XXX, 7, 97), and on 3 September 1715 the council listed him as the clerk of the lower house at a salary of twelve thousand pounds of tobacco per year. *Ibid.*, XXV, 320. On 24 April 1716 he was again reappointed clerk of the lower house (*ibid.*, XXV, 341; XXX, 362), and on 10 August 1716 he signed the record of the lower house for its session from 17 July to that date. *Ibid.*, XXX, 606.

At the beginning of the next session Michael Jenifer became clerk. *Md. Arch.*, XXXIII, 53-54.

In addition to his salary, the clerk of the lower house received fees for various services he performed during a session. On 30 May 1715, for example, the lower house ordered that Macnemara receive twelve hundred pounds of tobacco and four pounds sterling for private bills that the assembly passed during that session. *Md.*

*Arch.*, XXX, 203.

On 10 May 1715 the delegates ordered that Philemon Hemsley and his wife Mary, the widow of Colonel John Contee, pay Macnemara as clerk of the lower house five hundred pounds of tobacco “for all the Care and Trouble he . . . [had] taken about the Complaint” that Mary Hemsley had embezzled “the Arms & Magazine” of the province after the death of her previous husband, John Contee. They also ordered the Hemsleys to pay the serjeant-at-arms of the lower house one hundred pounds of tobacco and the doorkeeper fifty pounds of tobacco. *Md. Arch.*, XXX, 139. On 10 May 1715 the lower house decided that the Hemsleys should have “to make Satisfaction” for the deficiency in their account, (*ibid.*, XXX, 138-139), and the next day the upper house agreed. *Ibid.*, p. 39.

For the issue of Mary Hemsley’s allegedly embezzling “the Arms & Magazine” of the province, see *ibid.*, XXIX, 98, 154, 155, 403-404, 417; XXX, 38, 39, 134, 137-138.

<sup>9</sup> *Ibid.*, XXIX, 408.

<sup>10</sup> In 1708 the assembly provided that the attorney in any action in a county court would receive one hundred pounds of tobacco “and no more” (1708, c. 8, *Md. Arch.*, XXVII, 360), but in 1710 it provided that in any action in a county court in which the debt or damages exceeded two thousand pounds of tobacco or ten pounds sterling the attorney would receive two hundred pounds of tobacco for his fee. 1710, c. 1, *Md. Arch.*, XXVII, 560-561. In 1712 the assembly re-enacted this provision, to be in force until the end of the first session after the arrival of a governor. 1712, c. 1, *Md. Arch.*, XXXVIII, 146.

Eliminating that provision in the bill of 1714 would have returned the fees of attorneys to those provided in the act of 1708.



<sup>11</sup> *Md. Arch.*, XXIX, 368. Amos Garrett was the first mayor of Annapolis. First Charter of Annapolis, Chancery Record 2, p. 590; Elihu S. Riley, “*The Ancient City.*” *A History of Annapolis, in Maryland, 1649-1887* (Annapolis: Record Printing Office, 1887), p. 86; Second Charter of Annapolis, Chancery Record 2, p. 597; Riley, *The Ancient City*, pp. 87-88. Edward C. Papenfuse, ed., *An Historical List of Public Officials of Maryland: Governors, Legislators, and Other Principal Officers of Government, 1632 to 1990* (Annapolis: Maryland State Archives, 1990), p. 337, mistakenly lists him as mayor until 1720.

<sup>12</sup> *Md. Arch.*, XXIX, 368-370.

<sup>13</sup> *Ibid.*, pp. 373, 416-417.

<sup>14</sup> *Ibid.*, p. 417.

<sup>15</sup> *Ibid.*, pp. 375-376, 423.

<sup>16</sup> The record of the passing of the bill by the upper house appears in *ibid.*, pp. 371-372. The message to the lower house concerning that passage is in *ibid.*, p. 414.

<sup>17</sup> *Ibid.*, pp. 378, 426.

<sup>18</sup> *Ibid.*, pp. 379, 427.

<sup>19</sup> *Ibid.*, pp. 383, 431.

<sup>20</sup> *Ibid.*, pp. 383-384, 384, 431-432, 432.

<sup>21</sup> John Dodd had an inn in his own house. Anne Arundel County Court Judgment Record, Liber T. B., No. 2, pp. 201, 377; Liber T. B., No. 3, pp. 106, 158a; Liber V. D., No.1, pp. 190, 414.

<sup>22</sup> 1708, c. 8, *Md. Arch.*, XXVII, 361.

<sup>23</sup> *Md. Arch.*, XXIX, 385, 433-434. The record of the lower house in the *Archives* leaves out a crucial “or.” *Ibid.*, pp. 433-434. For the correct wording, see the record of the upper house (*ibid.*, p. 385) or the act on officers’ fees. 1714, c. 5,

*Md. Arch.*, XXIX, 446-447.

The “Act for Relieving the Inhabitants of this Province from some Aggrievances in the Prosecution of Suits at Law” is 1714, c. 4, *Md. Arch.*, XXIX, 439-442.

<sup>24</sup> *Md. Arch.*, XXIX, 385-386, 433-434.

<sup>25</sup> 1714, c. 5, *Md. Arch.*, XXIX, 446-447.

<sup>26</sup> *Md. Arch.*, XXX, 191.

<sup>27</sup> Lois Green Carr and Russell R. Menard, “Immigration and Opportunity: The Freedman in Early Colonial Maryland,” in Thad W. Tate and David L. Ammerman, eds., *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society* (Chapel Hill: The University of North Carolina Press, 1979), p. 210; Lois Green Carr, “Diversification in the Colonial Chesapeake: Somerset County, Maryland, in Comparative Perspective,” in Lois Green Carr, Philip D. Morgan, and Jean B. Russo, eds., *Colonial Chesapeake Society* (Chapel Hill: The University of North Carolina Press, 1988), pp. 344, 345; Gloria L. Main, *Tobacco Colony: Life in Early Maryland, 1650-1720* (Princeton: Princeton University Press, 1982), pp. 80, 124; Arthur Pierce Middleton, *Tobacco Coast: A Maritime History of Chesapeake Bay in the Colonial Era* (Newport News, Va.: The Mariner’s Museum, 1953; reprinted Baltimore: The Johns Hopkins University Press, 1984), pp. 176, 177; William Stevens Perry, ed., *Historical Collections Relating to the American Colonial Church* (5 vols. in 4; Hartford: Printed for the Subscribers, 1870-1878; reprinted New York: AMS Press, Inc., 1969), IV, *Maryland*, p. 245.

<sup>28</sup> “. . . whereof he could not gett any part.”

<sup>29</sup> The desire to be paid in tobacco from the Western Shore was not new with Macnemara. On 3 July 1696 the delegates granted the petition of William Bladen, their clerk, that the tobacco that would be allowed him in that year’s levy be paid him

in tobacco from Anne Arundel County. *Md. Arch.*, XIX, p. 407. On 9 December 1704 the delegates granted the petition of William Taylard, their clerk, that since for several years he had received his salary “in remote Counties on the Eastern Shore” he would in the future be paid in tobacco from the Western Shore unless he was paid in money and that for “some other extraordinary Service he be advanced & allowed more 1200<sup>lb</sup> Tobacco a Journal.” *Ibid.*, XXVI, 407. On 9 December 1708 the delegates ordered that part of that year’s salary of their clerk, Richard Dallam, be paid in the present levy with four thousand pounds of tobacco from Calvert County. *Ibid.*, XXVII, 299; Journal of the Committee of Accounts, 9 December 1708, in “Unpublished Provincial Records,” *Maryland Historical Magazine*, XVII, No. 1 (March 1922), p. 56. On 30 October 1713 the delegates ordered that Dallam be paid one thousand pounds of tobacco “for recording each Journal,” to be paid in Calvert County. *Md. Arch.*, XXIX, 270.

While the entry is not entirely clear, apparently the delegates might use tobacco from the Eastern Shore to make up for shortages in other counties. On 3 November 1711 the delegates ordered that the next year Dallam be allowed three thousand pounds of tobacco from Somerset County “to make his Allow. in S<sup>t</sup> Mary’s County equivalent to the Tobacco he ought to have had in Prince George’s or Calvert County.” *Ibid.*, p. 74.

<sup>30</sup> *Md. Arch.*, XXX, 509. Macnemara might have been justified in expecting some extra consideration from the lower house, since he did work that had nothing to do with keeping the Journal of the lower house current. On 26 June 1714, for example, the delegates ordered that he “provide a Lock and Key and Stud for the Assembly Office and be allowed in the publick Stock for the same.” *Ibid.*, XXIX, 406.

A stud is “something attached to, fixed in, or projecting from a surface.” *Webster’s Third New International Dictionary of the English Language Unabridged* (1981). Thus the stud in this case would be part of the mechanism for locking the door.

On 23 July 1716 the lower house ordered that since one of the books of the land records was destroyed when the statehouse burned on the night of 17-18 October 1704 Macnemara should make a “reasonable agreement” with someone to copy the extract of that volume. He should have that copy ready at the next session of the assembly, when the lower house would provide for the payment of whoever made the copy and would also consider his own “trouble and charge.” *Md. Arch.*, XXX, 499.

For the date of the burning of the statehouse, see *ibid.*, XXV, 179-180.

The book of land records that was burned when the statehouse burned was Liber L. M., 1656 and 1657. *Ibid.*, XXX, 499.

<sup>31</sup> *Ibid.*, XXV, 32; Owings, *His Lordship’s Patronage*, pp. 54-55.

<sup>32</sup> *Md. Arch.*, XXX, 551.

<sup>33</sup> While he was the clerk of the lower house Macnemara continued his legal practice. For his successful defense in the lower house of William Jones’ title to some land in Somerset County while he was clerk of the lower house, see *Md. Arch.*, XXX, 515-516; 1716, c. 18, *Md. Arch.*, XXXVIII, 222-226. For other references to this issue, see *Md. Arch.*, XXX, 137, 428, 434, 462, 473, 537-538, 551-552, 562-563, 589, 597, 605.

<sup>34</sup> The Pretender, who claimed to be the rightful king of Great Britain, was James Edward (1688-1766), the Old Pretender, who was the son of James II and who called himself James III. Sir George Clark, *The Later Stuarts, 1660-1714* (2nd edition; Oxford: The Clarendon Press, 1955), pp. 198, 240-243, and Genealogical

Table; J. H. Plumb, *The First Four Georges* (New York: The Macmillan Company, 1957), p. 44.

<sup>35</sup> Four provincial justices to upper house, 5 May 1718, *Md. Arch.*, XXXIII, 171-172; 1718, c. 16, *Md. Arch.*, XXXVI, 525-527; 1719, c. 17, *Md. Arch.*, XXXVI, 528-530; Chapter 11, “Disbarred Again, 1718,” at Note 70.

<sup>36</sup> Provincial Court Judgment Record, Liber V. D., No. 3, pp. 234, 262; Liber P. L., No. 4, pp. 83-84; Chapter 9, “Harassment by Indictment, 1712-1719,” at Note 103. For King George I’s general pardon of 1717 see *ibid.*, at Notes 9, 106.

<sup>37</sup> In his opening speech to the assembly on 23 April 1718 John Hart said that he was informed that some of “the leading men of the Romish Community” had gone as emissaries to London, where they were very active against him in trying to get him removed. They complained about “how Cruel a manner they were treated in,” supposing that if they could “by any means remove . . . [him] from . . . [his] Station, they might have at least the Chance, to find . . . [his] Successor more Pliable to their Intreagues,” and he would be a “sacrifice . . . to their Revenge.” *Md. Arch.*, XXXIII, 121, 122, 204, 205. See also Chapter 11, “Disbarred Again, 1718,” at Note 6.

If John Hart remembered correctly in his opening speech to the assembly on 6 April 1720, Macnemara and Charles Carroll could not have gone to England together, since, according to Hart, Carroll returned to Maryland soon after the Catholics fired the guns of Annapolis on 10 June 1716 (*Md. Arch.*, XXXIII, 480-481, 569), while Macnemara must not have left for England until after 11 October 1716, when he allegedly announced in public that when Hart and his council examined him on 4 October they acted like the Spanish Inquisition. Provincial Court Judgment Record, Liber P. L., No. 4, pp. 83-84.

<sup>38</sup> These are the penalties that Parliament provided in the acts of trade and

navigation. 12 Charles II, c. 18, par. 2, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), VII, 453; 15 Charles II, c. 7, par. 8, in *ibid.*, VIII, 163; 7-8 William III, c. 22, par. 4, in *ibid.*, IX, 430.

<sup>39</sup> TNA (PRO), Colonial Office 5, Vol. 720, No. 15; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXX, No. 289.

Macnemara's attack on Hart came at about the same time as Mary Hemsley's accusation in her letter to the king that Hart showed "great favour to the Papists and Jacobites . . ." TNA (PRO), *Calendar of State Papers: Colonial Series*, XXX, No. 288. For Mary Hemsley's attack on Hart, see Chapter 10, "John Hart's Vendetta, 1717-1719," at Note 39.

<sup>40</sup> *Md. Arch.*, XXXIII, 181-182, 258-259.

<sup>41</sup> In 1682 the oath of the clerk of the lower house included an oath of secrecy (*Md. Arch.*, VII, 261), as it did in 1683 (*ibid.*, pp. 448, 525), in 1692 (*ibid.*, XIII, 260, 362), and on 14 March 1697/8, when William Bladen took the oath. *Ibid.*, XXII, 83; TNA (PRO), *Calendar of State Papers: Colonial Series*, XVI, No. 294 (p. 134).

Later in 1698, however, secrecy was not a part of the oath of the clerk. On 22 October 1698 the delegates accepted Governor Francis Nicholson's nomination of Christopher Gregory as their clerk "but refused to swear him unless hee tooke allsoe an Oath of secresye which they say is usual." *Md. Arch.*, XXII, 156-157. The delegates temporarily surrendered, however, and later that day accepted the swearing of Gregory without any oath of secrecy. *Ibid.*, pp. 158, 208-209.

This was Nicholson's innovation. If the governor could name the clerk of the lower house, and if the clerk did not have to take an oath of secrecy, the governor could have an informant sitting among the delegates. Through his council Nicholson

made it clear that that is what he wanted (*ibid.*, pp. 186-187, 253-254), but the delegates finessed him. Gregory took the oath on Saturday, and on Monday the delegates included the clerk in the rule that all proceedings in the house be kept secret. *Ibid.*, p. 212.

With characteristic arrogance and sophistry, Nicholson was willing to have everyone in the assembly sworn to secrecy except the clerk (*ibid.*, p. 158) and the clerks of committees, allegedly to prevent the spreading of false stories that would distract the people (*ibid.*, pp. 179, 182, 185-186, 186, 245, 243, 252, 253) and to maintain order in the province. *Ibid.*, XXV, 44.

<sup>42</sup> 1716, c. 8, *Md. Arch.*, XXX, 627-632 (incomplete); XXXVIII, 199-207 (complete).

. . . the other twelve to his Ldp's Governor for the time being actually inhabiting & residing within this Province for the better enabling him to support the honour & Dignity of Gov<sup>t</sup> & effectually to execute the Powers & Authorities to him committed . . . .

The other three pence per hogshead went “for the purchasing Arms & Ammunition for the maintaining a Magazine for the better Defence of this Province & for the due Preservation thereof . . . .” *Md. Arch.*, XXX, 628; XXXVIII, 203.

<sup>43</sup> *Ibid.*, XXXIII, 4, 55.

<sup>44</sup> *Ibid.*, pp. 5-6, 57. If it *was* Macnemara to whom Hart was referring, as it apparently was, the news traveled very fast. Macnemara did not leave Maryland until sometime after 11 October 1716, and Hart was speaking on 29 May 1717. Such speedy communication was not impossible: if Macnemara got to England in the late fall of 1716 he had plenty of time to talk to people before someone had to leave England to get back to Maryland by the end of May of 1717.

<sup>45</sup> *Md. Arch.*, XXXIII, 101.

<sup>46</sup> *Ibid.*, p. 47.

<sup>47</sup> *Ibid.*, pp. 16, 65.

<sup>48</sup> Earlier Hart might have trusted Macnemara. At the Prince George's County court for March of 1716 Macnemara served as Hart's attorney in an action of trespass on the case against Christopher Beanes. Beanes appeared for himself and confessed judgment, and the justices awarded Hart 6300 pounds of tobacco and 364 pounds of tobacco costs. Prince George's County Court Record, Liber H, pp. 42-43. Since Beanes confessed judgment, however, this might have been a non-litigious action, and therefore Hart might have had nothing to do with selecting his attorney.

For non-litigious actions, see Chapter 9, "Harassment by Indictment, 1712-1719, at Notes 84-88; C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), 397-398, 412-418, 423-424.

<sup>49</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 525-527; Chapter 11, "Disbarred Again, 1718."

<sup>50</sup> Chancery Record 3, p. 401.

<sup>51</sup> Owings, *His Lordship's Patronage*, p. 181.

<sup>52</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 526; 1719, c. 17, *Md. Arch.*, XXXVI, 528.

<sup>53</sup> *Md. Arch.*, XXXIII, 170-171; Owings, *His Lordship's Patronage*, p. 159. Owings says that Macnemara succeeded John Rousby II as naval officer of Patuxent in midsummer of 1717. On 3 September 1717 Rousby became collector of Patuxent. *Ibid.*, pp. 159, 180.

<sup>54</sup> Provincial Court Judgment Record, Liber P. L., No. 4, pp. 83-84; Chapter 9, "Harassment by Indictment, 1712-1719," at Note 103; Chapter 10, "John Hart's Vendetta, 1716-1719," at Notes 4-5.



<sup>55</sup> Charles M. Andrews says that the office of naval officer “was in the gift of the governor, but the choice was often directed either by the secretary of the colony or by the proprietor.” Charles M. Andrews, *The Colonial Period of American History* (4 vols.; New Haven: Yale University Press, 1934-1938), IV, *England’s Commercial and Colonial Policies*, p. 188n. See also *Md. Arch.*, XXV, 344.

<sup>56</sup> *Md. Arch.*, XXXIII, 138, 216-217.

<sup>57</sup> *Ibid.*, p. 170.

<sup>58</sup> Owings, *His Lordship’s Patronage*, p. 159. For the date of Macnemara’s death, see Chapter 1, “Character,” Note 11.

<sup>59</sup> *Md. Arch.*, XXXIII, 491, 583. Birchfield had been using Macnemara as his attorney as early as May of 1714. See next note. On 3 May 1715 the delegates gave Macnemara, who at the time was the clerk of the lower house, permission to attend the meeting of the upper house the next day, when it would consider a petition of Daniel Philips, the surviving administrator of the late Colonel Henry Mitchell of Calvert County, on the prosecution of a navigation bond. Macnemara’s presence was necessary because he was the prosecutor for the king in such cases. *Md. Arch.*, XXX, 18, 112.

The next day the upper house unanimously decided that the suit against the bond should not be suspended even though they had evidence that the ship in question had been driven ashore in Ireland, that most of the tobacco on the ship had been lost, and that what tobacco was saved “was put into the Hands of the Custom House Officers.” *Ibid.*, pp. 18, 21-22, 112, 115.

For Macnemara’s representing Birchfield in a petition to the assembly, see *Md. Arch.*, XXXIII, 154, 233, 233-234, 243, 245-246, 285, 247.

<sup>60</sup> Chancery Record 3, pp. 65-68, 72-73, 81, 81-83, 83, 94, 118-121, 241, 247-

251, 296-299, 313-314, 315-316, 317-318, 318, 335, 336, 379-381, 382, 387, 393, 394, 416-418, 421, 425-426, 426, 429, 432-434, 434, 436, 441-443, 495-496, 531-534, 539, 542, 546, 562, 569, 570, 591, 608, 614-648, 650, 672, 690, 702-703, 720-722, 724-725, 763-773, 773-780, 782-783, 786-788, 800, 803, 805, 812-814, 815-818, 818-819, 831, 887-892.

The cases are very difficult to follow in the record of the chancery court, and it will not be surprising if people challenge my figures.

<sup>61</sup> *Md. Arch.*, XXXIII, 3, 13, 48; Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 42, 172.

<sup>62</sup> C. Ashley Ellefson, *William Bladen of Annapolis, 1673?-1718: "the most capable in all Respects" or "Blockhead Booby"?*, Chapter 2, "Placeman," at Notes 20-21, Volume 747 of the Archives of Maryland Online, at <http://www.aomol.net/000001/000747/html/index.html>.

<sup>63</sup> *Md. Arch.*, XXX, 478; XXXIII, 54; *Biographical Dictionary*, I, 42; II, 899.

<sup>64</sup> *Md. Arch.*, XXV, 132, 150.

<sup>65</sup> *Ibid.*, p. 215; XXVI, 535; Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 167, 355, 399, 411, 457, 490, 532, 567, 615, 646, 672, 686, 733, 749, 801.

<sup>66</sup> *Md. Arch.*, XXVII, 383; Prince George's County Court Record, Liber D, pp. 87, 104, 105.

<sup>67</sup> Josiah Wilson was an alderman under both of the charters of Annapolis of 1708. Chancery Record 2, pp. 590-591, 597; Riley, *The Ancient City*, pp. 86, 88.

<sup>68</sup> Cecil County Land Records, Liber J. D., No. 3, pp. 13-17.

<sup>69</sup> *Ibid.*, Liber J. D., No. 2, pp. 395-397.

<sup>70</sup> *Md. Arch.*, XXX, 478; XXXIII, 61; *Biographical Dictionary*, I, 42; II, 848-849.

<sup>71</sup> Owings, *His Lordship's Patronage*, p. 164. Matthew Vanderheyden and Matthias Vanderheyden were the same person. Cecil County Land Record, Liber J. D., No. 3, pp. 13-17, 17-18.

<sup>72</sup> Anne Arundel County Court Judgment Record, Liber V. D., No. 1, pp. 400-403.

<sup>73</sup> *Ibid.*, Liber T. B., No. 2, pp. 372, 402, 465; Liber T. B., No. 3, pp. 1, 100, 130, 169, 108a, 154a, 197a, 271.

<sup>74</sup> *Md. Arch.*, XXV, 127; Anne Arundel County Court Judgment Record, Liber G, pp. 414-416; Liber T. B., No. 1, pp. 111-113; Liber T. B., No. 2, pp. 1-2, 37-39; Liber V. D., No. 1, pp. 185-188, 193-196.

<sup>75</sup> *Md. Arch.*, XXV, 150; Anne Arundel County Court Judgment Record, Liber G, pp. 481, 612, 613, 658, 673; Liber T. B., No. 1, pp. 17, 45, 97; Liber T. B., No. 2, pp. 1, 33, 60, 73, 89, 114, 155, 185, 200, 227, 278, 324.

<sup>76</sup> Anne Arundel County Court Judgment Record, 1722-1723, pp. 1, 93; *Biographical Dictionary*, I, 376.

<sup>77</sup> Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, *Maryland*, p. 92.

<sup>78</sup> *Md. Arch.*, XXIX, 254.

<sup>79</sup> Owings, *His Lordship's Patronage*, p. 182. The job of the collector was to help enforce the navigation acts and to collect revenues due to the Crown. *Ibid.*, p. 92.

<sup>80</sup> *Ibid.*, p. 184. The job of the riding surveyor was to search for illegal goods.

*Ibid.*, p. 97.

<sup>81</sup> Commissioners of Customs to John Hart, 19 April 1718, Chancery Record 3, p. 418; Commissioners of Customs to Lord Guilford, 13 December 1718, *Md. Arch.*, XXXIII, 491, 583.

<sup>82</sup> Macnemara went to England sometime after 11 October 1716, and apparently he returned to Maryland sometime before the provincial court met on 9 April 1717. Provincial Court Judgment Record, Liber V. D., No. 2, pp. 381, 390; Liber V. D., No. 3, pp. 78-81; Liber P. L., No. 4, pp. 83-84; *Md. Arch.*, XXXVI, 530-532; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXX, No. 289.

For the ambiguity about when Macnemara returned, however, see Chapter 1, “Character,” Note 58.

<sup>83</sup> Chancery Record 3, p. 332.

<sup>84</sup> *Ibid.*, pp. 335, 336.

<sup>85</sup> For Macnemara’s first trip to England, see Chapter 5, “Railroading, 1710-1713,” at Note 89. For citations for Macnemara’s three trips to England between his arrival in Maryland in 1703 and his death in 1719, see: **1710-1711** (or **1712**): Unidentified writer to unidentified correspondent in England, 4 April 1711, TNA (PRO), Colonial Office 5, Vol. 720, No. 8.ii, and TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(b); Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127, and TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16; Chancery Record 2, p. 833; **1716-1717**: Provincial Court Judgments, Liber P. L., No. 4, pp. 83-84; Liber V. D., No. 2, pp. 381-390; Liber V. D., No. 3, pp. 78-81; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXX, No. 289; Chancery Record 3, pp. 379, 380, 381; **1718-1719**: Jacob Henderson, ecclesiastical commissary of the West-

ern Shore, to John Robinson, Bishop of London, 4 September 1718, in William Stevens Perry, ed., *Historical Collections of the American Colonial Church* (5 vols. in 4; Hartford, Ct.: Printed for the Subscribers, 1870-1878; reprinted New York: AMS Press, 1969), IV, *Maryland*, p. 114; Provincial Court Judgments, Liber P. L., No. 4, pp. 76-77; Chancery Record 3, p. 434; Anne Arundel County Court Judgment Record, Liber R. C., p. 373.

Citations are not only for evidence of when Macnemara left for England in each instance but also for evidence of when he returned.

<sup>86</sup> Macnemara must have left for England sometime after the middle of July of 1718, after he unsuccessfully defended Thomas Woodfield in the provincial court on a charge of perjury (Provincial Court Judgment Record, Liber V. D., No. 3, pp. 106, 225, 244; Liber P. L., No. 4, pp. 77-80, 235), to protest the law by which the assembly had just disbarred him (1718, c. 16, *Md. Arch.*, XXXVI, 525-527; Chapter 11, "Disbarred Again, 1718," and Chapter 12 "Reinstatement and Outrage, 1719," at Notes 6-18) and to convey to John Robinson, the Bishop of London, the complaint of Jacob Henderson, the ecclesiastical commissary for the Western Shore, against John Hart. In a letter dated 4 September 1718 Henderson told Robinson that Macnemara would deliver to him the records of Henderson's Visitation with the clergy on 4 December 1717 and also give him a "full account of all affairs" in Maryland. Jacob Henderson to Bishop of London, 4 September 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 114-115. For the Visitation, see *ibid.*, pp. 92-96, and Chapter 8, "Procurator of Office, 1717-1719," at Notes 54-58.

At the Anne Arundel County court for August of 1718 the sheriff, Benjamin Tasker, returned a *capias ad respondendum* against Macnemara endorsed *non est inventus* (Anne Arundel County Court Judgment Record, Liber R. C., p. 239), which

means that he could not find Macnemara, and at the provincial court for September of 1718 Tasker returned a writ of *capias ad respondendum* against Macnemara also endorsed *non est inventus*. Provincial Court Judgment Record, Liber P. L., No. 4, p. 232. And in the chancery court on 14 October 1718 Hart “observed” that Macnemara had “fled from Justice.” Chancery Record 3, p. 416.

Macnemara might also have been in England to lobby to get a settlement in the Spanish West Indies for Catholics in Maryland, as Beatriz Betancourt Hardy suggests when she says that the Catholics “sent an agent, possibly Thomas Macnemara, to London to ask the Spanish ambassador to grant them land in the Spanish West Indies, so they could move if Hart continued as governor.” TNA (PRO), *Calendar of State Papers: Colonial Series*, XXXV, No. 501; Beatriz Betancourt Hardy, “Papists in a Protestant Age: The Catholic Gentry and Community in Colonial Maryland, 1689-1776” (Ph. D. dissertation: The University of Maryland, 1993), pp. 165-166.

For the ambiguity of the time of Macnemara’s return to Maryland in 1719, see Chapter 9, “Harassment by Indictment, 1712-1719,” Note 143.

<sup>87</sup> Chancery Record 3, pp. 416, 417. Hart could say that Macnemara had fled from justice because there were four outstanding indictments against him. These were never tried. See again Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 129-140.

<sup>88</sup> *Md. Arch.*, XXXIII, 537-538, 623-624.

<sup>89</sup> Mary Dodd was probably the widow of John Dodd, who had an inn in Annapolis. See Note 21 above. John Dodd was dead by 4 January 1717/18 (Testamentary Papers, Box 24, Folder 41), but in the card Index to the Anne Arundel County Court Judgment Record, where licenses for inns in Annapolis would be listed, there is no entry for Mary Dodd. Box DEM-DOR.

<sup>90</sup> The complaint of some of the defendants that they had never had any dealings with the merchants to whom they were supposed to be indebted could be explained by the merchants with whom they *had* had dealings selling the debts to other merchants. See *Md. Arch.*, XXXIII, 531, 616-617. If the Crown sold debts, probably others did also.

<sup>91</sup> Why the Committee of Aggrievances used the figure of six pounds is not clear. By acts of 1704 and 1715, a person could not sue in chancery unless the original debt or damages amounted to at least 1201 pounds of tobacco of £5.0.1 sterling. 1704, c. 31, *Md. Arch.*, XXVI, 283-285; 1715, c. 41, *Md. Arch.*, XXX, 241.

<sup>92</sup> For the progress of these cases, see Text above at Notes 60, 84, 87ff.

<sup>93</sup> *Md. Arch.*, XXXIII, 175, 249-250.

<sup>94</sup> *Ibid.*, pp. 174-175, 252.

<sup>95</sup> See Chapter 11, “Disbarred Again, 1718.”

<sup>96</sup> Here Bladen must have been using “par” not in the sense in which we ordinarily think of it but rather to refer to the actual capacity of the containers holding the liquor. The naval officer was supposed to allow twenty percent for leakage. See Note 104 below.

<sup>97</sup> *Md. Arch.*, XXXIII, 159, 236. What letters the upper house sent to the lower house does not appear.

A drawback is a refund of all or part of an import duty when the importer re-exports the goods. Henry Campbell Black, *Black’s Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 495.

<sup>98</sup> *Md. Arch.*, XXXIII, 165, 244. The act limiting the fees of naval officers was 1717, c. 2, *Md. Arch.*, XXXIII, 107-109, which supplemented 1704, c. 86, *Md. Arch.*,

XXVI, 421-422.

<sup>99</sup> *Md. Arch.*, XXXIII, 180.

<sup>100</sup> *Ibid.*, p. 165.

<sup>101</sup> *Ibid.*, pp. 171-172; *Biographical Dictionary*, I, 42.

<sup>102</sup> *Md. Arch.*, XXXIII, 168-172. For the attack of the four provincial justices on Macnemara, see Chapter 11, “Disbarred Again, 1718,” at Notes 58-74.

<sup>103</sup> *Md. Arch.*, XXXIII, 181-182.

<sup>104</sup> The law allowed for twenty percent leakage: the naval officer was not supposed to tax that amount but rather was to tax only eighty percent of the actual capacity of the containers holding imported liquor. 1699, c. 23, *Md. Arch.*, XXII, 498; 1704, c. 33, *Md. Arch.*, XXVI, 290; 1715, c. 36, *Md. Arch.*, XXX, 327, 329.

Thus Hart was saying that Bell had taxed Pulsifer on the whole capacity of his containers rather than on only eighty percent of that capacity. Since the naval officer’s fee was eight percent of the tax (1704, c. 33, *Md. Arch.*, XXVI, 291; 1715, c. 36, *Md. Arch.*, XXX, 330; Owings, *His Lordship’s Patronage*, pp. 65-66), the excessive tax would result in an excessive fee.

<sup>105</sup> In deciding how much tax Pulsifer owed the province Bell would automatically decide the amount of Macnemara’s fees.

His Excy acquaints him [Bell] of the Injustice done to Cap<sup>t</sup> Pulsifer in Charging Exorbitant Fees in that Account, and that he has Unjustly taken from him the 20 P C<sup>t</sup> on his Liquors which the Law Allows him[.]

*Md. Arch.*, XXXIII, 180.

<sup>106</sup> *Ibid.*, pp. 180-181.

<sup>107</sup> I have found no action of Pulsifer against Macnemara either in the chancery court, the provincial court, or the Anne Arundel County court.



<sup>108</sup> *Md. Arch.*, XXXIII, 181-182; Chapter 11, “Disbarred Again, 1718,” at Note 78.

<sup>109</sup> *Md. Arch.*, XXXIII, 181-182, 258-259, 270; 1718, c. 16, *Md. Arch.*, XXXVI, 525-527; Chapter 11, “Disbarred Again, 1718,” at Notes 79-102.

<sup>110</sup> For Nathaniel Blakiston as the agent of the province, see *Md. Arch.*, XXXIII, 60, 633. Blakiston was governor of Maryland from 19 October 1698 until 30 June 1702. Owings, *His Lordship’s Patronage*, p. 120.

<sup>111</sup> *Md. Arch.*, XXXIII, 191, 272-273.

<sup>112</sup> *Ibid.*, pp. 280-281. By a law of 1704 the single justice could try any case in which the debt or damage was no more than two hundred pounds of tobacco or £0.16.8 sterling. The county court could not hear such a case. 1704, c. 31, *Md. Arch.*, XXVI, 284-285. By a law of 1715 the single justice could try any case in which “the reall debt or Damage” was no more than four hundred pounds of tobacco or £0.33.4 sterling. 1715, c. 12, *Md. Arch.*, XXX, 320-321. By another act of 1715 the assembly ruled that the county courts could not hear such cases. 1715, c. 41, *Md. Arch.*, XXX, 241.

The record does not include the amounts that Birchfield’s cases involved. See the dismissals included in Note 161 below.

<sup>113</sup> *Md. Arch.*, XXXIII, 276.

<sup>114</sup> *Ibid.*, pp. 303, 372.

<sup>115</sup> According to the record of the chancery court for 3 September 1717 Hart decided to send the proceedings of three cases to England: Birchfield against Michael Miller, executor of Michael Miller; Birchfield against Arthur Miller; and Birchfield against William Bladen. Chancery Record 3, p. 394.

<sup>116</sup> Chancery Record 3, p. 418.

<sup>117</sup> [Thomas] Bordley, Daniel Dulany, Samuel Young, [Thomas] Larkin, and [Philemon] Hemsley. *Ibid.*, Only Samuel Young was a member of the council and therefore one of the justices in chancery. *Biographical Dictionary*, I, 42; II, 931-932.

<sup>118</sup> Chancery Record 3, p. 418.

<sup>119</sup> Laws requiring governors to take an oath to enforce the Navigation Acts are 12 Charles II, c. 18, par. 2, in Pickering, *The Statutes at Large*, VIII, 453 (1660); 7-8 William III, c. 22, par. 4, in *ibid.*, IX, 429-430 (1696).

<sup>120</sup> *Md. Arch.*, XXXIII, 491, 583. Newton D. Mereness says that as chancellor Hart “incurred the censure of the home government by taking the part of the people against Birchfield” (Newton D. Mereness, *Maryland as a Proprietary Province* (New York: Macmillan Co., 1901; reprinted Cos Cob, Conn.: John E. Edwards, Publisher, 1968), p. 164), but possibly he was less on the side of the people than he was against Macnemara.

For Hart’s own suits against 167 people to recover money that they owed the dead Benedict Leonard Calvert, fourth Baron Baltimore, and that would be applied toward the £401.14.0 sterling that Hart claimed Baltimore owed him when he died, see Provincial Court Judgments, Liber V. D., No. 2, pp. 366-367; Liber V. D., No. 3, pp. 45-49, 49-51, 51-54, 54-58, 58-60, 60-62, 62-65, 65-68, 68-70, 95-96, 343-346, 346-348, 348-350, 351-353, 353-356; Liber P. L., No. 4, pp. 302-303.

<sup>121</sup> *Md. Arch.*, XXV, 355; XXXIII, 605.

<sup>122</sup> Macnemara had died sometime between 11 August and 8 September 1719. See Chapter 1, “Character,” Note 11.

<sup>123</sup> After a long resistance, the lower house did finally agree that Hart should have the three pence per ton. *Md. Arch.*, XXXIII, 515, 515-516, 520, 526, 530-531, 538-539, 539-540, 541, 542, 550, 550-551, 553-554, 554, 604, 606, 607, 608, 612-

613, 616, 625, 626, 627-628, 631-632, 635, 637, 638.

<sup>124</sup> *Md. Arch.*, XXV, 352-357, 604.

<sup>125</sup> Hart was complaining about exactly what he and the assembly had done to Macnemara. Hart had made charges against Macnemara that were so general that it was impossible for Macnemara to answer them, and Hart and the assembly had condemned Macnemara unheard. While Hart and the assembly *had* done these things to Macnemara, however, Baltimore and Guilford had *not* charged Hart with anything, and they had not condemned him at all, much less unheard.

For the vagueness of Hart's charges against Macnemara, see Chapter 10, "John Hart's Vendetta, 1717-1719," at Notes 30-34, and for Hart's and the assembly's condemning Macnemara unheard see Chapter 11, "Disbarred Again, 1718," at Notes 88-90, and Chapter 12, "Reinstatement and Outrage, 1719," at Notes 15-17.

Macnemara's prosecution of the colonial debtors and the charges of the Commissioners of Customs against Hart preoccupied Hart for the rest of his career in Maryland, but he got no satisfaction. *Md. Arch.*, XXXIII, 490-494, 514, 526-527, 528, 531, 537-538, 539, 552-553, 582-584, 601, 613, 614, 616-617, 623-624, 625, 632-633, 635-636.

<sup>126</sup> *Md. Arch.*, XXV, 357-358.

<sup>127</sup> See again Chapter 1, "Character," Note 11.

<sup>128</sup> *Md. Arch.*, XXXIII, 491-492, 584.

<sup>129</sup> *Md. Arch.*, XXXIII, 490-494, 582-585. For the date of Hart's resignation, see Owings, *His Lordship's Patronage*, pp. 120, 124. See also Chapter 14, "Gone But Not Forgotten, 1720," at Notes 6-9.

<sup>130</sup> *Md. Arch.*, XXXIII, 565.

<sup>131</sup> Provincial Court Judgment Record, Liber W. G., No. 1, p. 31.

<sup>132</sup> Charles Carroll died on 1 July 1720. Ronald Hoffman, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500-1782* (Chapel Hill: University of North Carolina Press, 2000), 95.

<sup>133</sup> John Rousby was a delegate from Calvert County (*Md. Arch.*, XXXIII, 565) and was also naval officer of Patuxent from 22 December 1707 until midsummer of 1717, receiver of Patuxent from 18 February 1707/8 until 28 October 1715, and collector of Patuxent from 3 September 1717 until his death in August of 1744. Owings, *His Lordship's Patronage*, pp. 159, 177-178, 180.

Robert Ungle, the Speaker of the lower house, was also treasurer of the Eastern Shore from 3 July 1714 until his death in 1727 and naval officer of Oxford from 1719 until his death. *Ibid.*, pp. 158, 163.

<sup>134</sup> It is true that the Commissioners of Customs had included no specific charges against Hart. They had told Baltimore and Guilford only that it appeared to them "by Severall Instances" that Hart had obstructed Birchfield. *Md. Arch.*, XXXIII, 491, 583.

<sup>135</sup> *Ibid.*, pp. 490-491, 582-583.

<sup>136</sup> *Ibid.*, pp. 493, 582.

<sup>137</sup> See Chapter 14, "Gone But Not Forgotten, 1720," at Notes 34-40.

<sup>138</sup> *Md. Arch.*, XXXIII, 514, 601. The delegate who the delegates claim had the certain knowledge about Hart's zeal in promoting the affairs of the Crown must have been John Rousby. See Note 133 above. Hart had already mentioned Rousby in his letter to the Speaker. *Ibid.*, pp. 490-491, 582-583.

<sup>139</sup> Chancery Record 3, p. 379; *Md. Arch.*, XXXIII, 514. See also Text above at Note 61.

<sup>140</sup> On orders from Baltimore and Guilford, Hart would have to leave for

England before the end of May 1720. *Md. Arch.*, XXXIV, 9, 67.

<sup>141</sup> *Ibid.*, XXXIII, 526-527, 613.

<sup>142</sup> *Ibid.*, pp. 490-491, 582-583.

<sup>143</sup> *Ibid.*, pp. 528, 614.

<sup>144</sup> *Ibid.*, pp. 531, 616-617.

<sup>145</sup> The record of the upper house in the *Archives* has “desireing” instead of “declining.” *Ibid.*, p. 537.

<sup>146</sup> The record of the lower house in the *Archives* has “on” Macnemara’s death. *Ibid.*, p. 624.

<sup>147</sup> *Ibid.*, pp. 537-538, 623-624.

<sup>148</sup> *Ibid.*, pp. 539, 625.

<sup>149</sup> *Ibid.*, 561, 644.

<sup>150</sup> John Mackall, Nathaniel Hynson, Richard Colegate, and Ralph Crabb. *Ibid.*, pp. 540, 627.

<sup>151</sup> *Ibid.*, p. 632.

<sup>152</sup> See Text above at Note 110.

<sup>153</sup> See Chapter 14, “Gone But Not Forgotten, 1720,” at Notes 14-19, 32-33.

<sup>154</sup> *Md. Arch.*, XXXIII, 632-633.

<sup>155</sup> See again Chapter 14, “Gone But Not Forgotten, 1720,” at Notes 34-40.

<sup>156</sup> *Md. Arch.*, XXXIII, 552, 633.

<sup>157</sup> *Ibid.*, pp. 553, 635-636.

<sup>158</sup> See Text above at Notes 140-156.

<sup>159</sup> Chancery Record 3, p. 614; Owings, *His Lordship’s Patronage*, pp. 120, 124.

<sup>160</sup> 1718, c. 10, *Md. Arch.*, XXXVI, 524-525. By this act the assembly provided

that in the county courts cases could continue no longer than twelve months, in the provincial court and the high court of appeals no more than nineteen months, and in the chancery court no more than twenty-five months “from and after the Return of the Writs or other Process . . . .” In cases already in progress the limits would apply from the end of that session of the assembly.

Since that session ended on 10 May 1718, when Holland dismissed the cases on 20 July 1720 more than twenty-six months had elapsed.

<sup>161</sup> Chancery Record 3, pp. 531-532, 532-534, 614-615, 615-617, 617-618, 618-619, 620-621, 621-622, 623-624, 624-625, 625-627, 627-628, 629-630, 630-631, 631-632, 632-633, 633-634, 634-635, 635-637, 637-638, 638-639, 639-641, 641-642, 642-643, 644-645, 645-646, 646-648.

The quote is from the case against Thomas Edelin. *Ibid.*, pp. 531-532.

Holland also discontinued one case without costs, discontinued one without any note about costs, struck off four, and sent the papers relating to four of them to England. *Ibid.*, p. 534.

I have not tried to trace the remainder of the cases, but for the case against Abraham Birkhead see Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 114-118.

Chancery Record 3 is very badly organized here. On pages 531-532 the register in chancery wrote up one of these cases, and on pages 532-534 he listed twenty-six more. The records for the courts of 18 October 1720, 21 February 1720/1, and 16 April 1721 follow, and then the register wrote up twenty-four more of the cases from 20 July 1720. *Ibid.*, pp. 614-648.

<sup>162</sup> Chancery Record 3, pp. 315, 336, 650, 690.

<sup>163</sup> See Ellefson, *William Bladen of Annapolis, 1673?-1718*, Chapter 7, “Bladen

the Man.”

<sup>164</sup> See Text above at Notes 37-40.

<sup>165</sup> See Chapter 2, “Competence,” at Notes 27-35, 38-51, 56-87; Ellefson, *William Bladen of Annapolis, 1673?-1718*, Chapter 6, “Attorney General.”

<sup>166</sup> Thomas Macnemara is not listed as a mayor of Annapolis in Papenfuse, ed., *An Historical List of Public Officials of Maryland*, p. 337. Alan Day is the first person I know of in recent years to point out that Macnemara was mayor of Annapolis. Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), p. 515.

<sup>167</sup> Second Charter of Annapolis, in Chancery Record 2, p. 599; Riley, *The Ancient City*, pp. 87-88.

<sup>168</sup> Second Charter of Annapolis, in Chancery Record 2, pp. 597-599; Riley, *The Ancient City*, p. 88.

<sup>169</sup> Second Charter of Annapolis, in Chancery Record 2, p. 597; Riley, *The Ancient City*, p. 88.

<sup>170</sup> *Md. Arch.*, XXXVI, 530-532; Provincial Court Judgment Record, Liber V. D., No. 3, p. 106; Text above at Notes 2, 166.

<sup>171</sup> Thomas Larkin was mayor of Annapolis on 29 September 1720. When Benjamin Tasker was elected mayor that day, Larkin became an alderman again, and when Vachel Denton was elected mayor on 29 September 1721 Tasker similarly became an alderman again. Annapolis Mayor’s Court Proceedings, Liber B, pp. 12-13, 27, 35, 51 (Larkin); *ibid.*, pp. 14, 18, 51-52, 54 (Tasker).

For the elections of Tasker and Denton, see *ibid.*, pp. 13, 52.

<sup>172</sup> For the date of Macnemara’s death, see again Chapter 1, “Character,” Note 11.

<sup>173</sup> 1719, c. 17, *Md. Arch.*, XXXVI, 528-530; Chapter 11, “Disbarred Again, 1718,” Chapter 12, “Reinstatement and Outrage, 1719,” and Chapter 13, “Disbarred Once More, 1719.”

<sup>174</sup> For the firing of the guns of Annapolis and the other allegations concerning the “supposed Birth Day” of the Pretender, see Chapter 11, “Disbarred Again, 1718,” at Notes 68-70, 97-98; Chapter 13, “Disbarred Once More, 1719,” at Note 17. For the Pretender, see Note 34 above.

The tenth of June was the actual birthday of the Pretender, not just his “supposed Birth Day.” At its session of November and December of 1688 the assembly passed “An Act for a perpetuall comemoration [*sic*] and thanksgiving on every tenth day of June for the birth of the Prince.” 1688, c. 1, *Md. Arch.*, XIII, 210.

<sup>175</sup> 1719, c. 17, *Md. Arch.*, XXXVI, 529. For 10 July 1716 as the date on which the special court met, see Chapter 1, “Character,” Note 15.

<sup>176</sup> John Smith, “aged about Twenty Six Years.”

<sup>177</sup> I do not know how many constables Annapolis had at this time. The second charter gave the mayor, the recorder, and the aldermen or any three of them, provided that the mayor or the recorder was one of the three, “full power and authority to make Constables and other nessesary [*sic*] officers . . . .” Second Charter of Annapolis, in Chancery Record 2, p. 599; Riley, *The Ancient City*, pp. 88-89. Apparently at this point Annapolis had only one constable. Annapolis Mayor’s Court Proceedings, Liber B, p. 22.

<sup>178</sup> In the record of Smith’s deposition as well as in the record of Evans’ bond Macnemara is identified as the mayor of Annapolis.

<sup>179</sup> Anne Arundel County Court Judgment Record, Liber V. D., No. 1, pp. 200-201, 475; Liber R. C., pp. 259, 557-558.



<sup>180</sup> After “hundred pounds” in this record, “sterl” is blacked out. “Current money” is not mentioned. Richard Young’s status is not noted in the record.

<sup>181</sup> Provincial Court Judgment Record, Liber V. D., No. 2, pp. 360-361. There was no indictment or presentment against Richard Evans. *Ibid.*, p. 127.

So here was Thomas Macnemara, the alleged abettor of the Papists, taking bond for the appearance and the good behavior of a man who had alarmed the city over an imaginary rising of the same group Macnemara was supposed to have abetted.

Beatriz Betancourt Hardy grossly exaggerates this incident when she says that on this occasion “an anti-Catholic hysteria spread throughout Annapolis.” Hardy, “Papists in a Protestant Age,” p. 153. The only person who appears to have been hysterical was Richard Evans.

<sup>182</sup> *Md. Arch.*, XXV, 240; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXIII, No. 1570; TNA (PRO), Colonial Office 5, Vol. 727, p. 89.

<sup>183</sup> For the 161 Catholics in Anne Arundel County in 1708, see Chapter 1, “Character,” Note 18.

<sup>184</sup> See Chapter 8, “Procurator of Office, 1717-1719.”

*Chapter 8*  
*Procurator of Office, 1717-1719*

It was bad enough that in the summer of 1717 Baltimore and Guilford forced Governor John Hart to appoint Macnemara the naval officer of Patuxent, but later that year Jacob Henderson, the ecclesiastical commissary of the Western Shore, appointed him his procurator or proctor of office, which meant that he would be Henderson's legal representative in religious matters.<sup>1</sup> As the representatives of the Bishop of London,<sup>2</sup> the two commissaries — one for each side of the Chesapeake Bay — were the chief administrative officers of the Anglican Church in the province,<sup>3</sup> and thus as Henderson's attorney Macnemara not only would represent the highest religious authority on the Western Shore but also would have a direct line to the Bishop of London.

John Hart had recommended that the Bishop of London appoint Henderson commissary of the Western Shore and Christopher Wilkinson commissary of the Eastern Shore,<sup>4</sup> but Hart and Henderson soon had a falling out.<sup>5</sup> According to Thomas Bordley, the quarrel resulted from Hart's insistence that Henderson, an Irishman and a Tory,<sup>6</sup> take the oaths to the government in spite of his reluctance.<sup>7</sup> John Gresham, the mayor of Annapolis, finally administered the oaths to him on 4 December 1717, at the beginning of Henderson's first Visitation of the clergy,<sup>8</sup> and on the same day Bernard White took the oaths as Henderson's register and Macne-

marara took the oaths as procurator of office.<sup>9</sup>

While the issue of the oaths might or might not have had an influence, it appears more likely that the quarrel between Hart and Henderson resulted from a collision of ambitions. Henderson's success in establishing the jurisdiction of the Bishop of London in the province would have reduced Hart's power not only by giving the authority to appoint clergy to the commissaries rather than to the governor, as the assembly had provided by an act of 1702,<sup>10</sup> but also by providing for ecclesiastical courts that might encroach on the jurisdiction of the county courts and the provincial court, which Hart could control by his appointment of the justices. According to Henderson, Hart only pretended to support the ecclesiastical jurisdiction, and his own earnestness in that effort had made him the object of Hart's jealousy and malice. Hart "could neither flatter nor caress" Henderson out of his determination to establish the bishop's authority in Maryland, and he often tried to get Henderson to show him the bishop's letters. Inconsistently, he had also made Henderson "large promises" that he would get an act of assembly to support the bishop's authority.<sup>11</sup>

But there was more. Not only did Henderson appoint Hart's great enemy Thomas Macnemara as his procurator of office, but at Henderson's Visitation on 5 December 1717, less than three months after the grand jury at the provincial court for September of 1717 returned six indictments against Macnemara,<sup>12</sup> Macnemara himself brought proceedings against Henry Hall, the rector of St. James' Parish in Anne Arundel County, former ecclesiastical commissary of the province<sup>13</sup> — a commission on which he "refused to act"<sup>14</sup> —, Henderson's own step-son-in-law,<sup>15</sup> and apparently one of Hart's great favorites, for allegedly threatening the Bishop of London, for "most audaciously contemning" the bishop's authority and the exercise of it, and for habitual drunkenness.<sup>16</sup> Hall requested a copy of the charges against him; Henderson

ordered that he have one; Hall agreed to respond to the charges by 13 March 1717/18; and Henderson admitted Thomas Cockshutt, the rector of All Saints' Parish in Calvert County,<sup>17</sup> as Hall's proctor or attorney.<sup>18</sup>

In the meantime, by refusing to return Hall's "letters of Orders" — his proof that he had been ordained an Anglican priest — and his license from the Bishop of London to officiate in America, Henderson would keep Hall from preaching.<sup>19</sup> That same day, however, — 5 December 1717 — Hall got an order from Hart directing Henderson to return Hall's orders immediately,<sup>20</sup> and later the Bishop of London reprimanded Henderson for detaining those orders.<sup>21</sup>

When on 13 March 1717/18 Cockshutt responded to the charges against Hall, Macnemara suggested that Hall should swear to the truth of the response. Hall, claiming that by law he was not required to do any such thing, refused. Henderson adjourned the Visitation until the next morning, when Macnemara refused to accept Hall's response because it was insufficient, and Henderson directed Macnemara to enter his objections to the response by the time of the next Visitation.<sup>22</sup>

As part of the politics of trying to get the assembly to pass an act to confirm the jurisdiction of the Bishop of London in the province Henderson gave up his investigation of Hall.<sup>23</sup> He would have had to give it up in any case, since, while the Bishop of London in a letter dated 14 March 1716/17 ordered him to begin executing his powers as commissary, in a letter dated 5 October 1717 he ordered him not to set up an ecclesiastical court.<sup>24</sup> Probably by the time Henderson got that last letter he had already given up his investigation of Hall.

On the suggestion of the Bishop of London,<sup>25</sup> with Hart's doubtful encouragement<sup>26</sup> and with hints of support from the delegates,<sup>27</sup> the clergy on 30 April 1718 petitioned Hart and the assembly to pass an act to recognize the authority and juris-

diction of the Bishop of London in the province, to provide that the expenses of the attendance of the churchwardens at visitations be paid by the parishes, to consider some way to support a clerk for each commissary, and to provide that the sheriffs of the counties serve citations for appearances before the commissaries during their visitations.<sup>28</sup>

According to Henderson, he did not support such a petition because he knew that it would fail and that its failure would weaken the position of the Bishop of London in the province, and therefore the position of his commissaries, rather than strengthen it.<sup>29</sup> Hart, Henderson was convinced, did not want the assembly to confirm the jurisdiction of the Bishop of London in Maryland but could pretend to support such an act because he knew that the delegates, who according to Henderson had opposed Hart when he first came to the province but were now his creatures,<sup>30</sup> would reject it because many of them wanted laymen to control the church.<sup>31</sup> The weakening of the commissaries, Henderson feared, would make any effort to maintain decorum among either the clergy or the laity precarious and useless. That, he claimed later, is exactly what happened, since with the failure of the petition most people concluded “that there . . . [was] no ground or foundation for such a Jurisdiction,”<sup>32</sup> and Hart would no longer have to worry about the commissaries’ encroaching on his authority.<sup>33</sup> The bishop’s jurisdiction in Maryland, Henderson believed, had lost more by the clergy’s application to the assembly than it would gain back in a long time.<sup>34</sup>

Henderson was right in having his doubts about Hart’s motives. At a convention of clergy that he called in Annapolis in April of 1718 Hart, trying to have it both ways, spoke like a true politician. He found several difficulties in the execution of the ecclesiastical commissaries’ commissions, he told the clergy, since, as much as

it might be wished that it was possible “to Put the Ecclesiasticall Cannons in full force” in Maryland as they were in England, both the constitution of the province and the natural situation of the country, which was filled with great rivers and creeks, made that impracticable. He had called the clergy together, however, to remove all such obstructions, and he would agree to anything they suggested that it was proper for him to do as governor.<sup>35</sup>

Removing the obstructions that Hart mentioned, of course, was impossible. Though faith might move mountains, even the clergy could do nothing about the great rivers and creeks.

Christopher Wilkinson, the commissary of the Eastern Shore, supported the petition, according to Henderson, and was the one who got Hart to summon all of the clergy of the province to a meeting in Annapolis while the assembly was in session.<sup>36</sup> Wilkinson, on the other hand, claimed that Hart ordered him to summon the clergy.<sup>37</sup>

In order to avoid being blamed if the petition failed, Henderson not only joined in it but withdrew the proceedings against Henry Hall, who according to Henderson was a great fan of Hart and who along with Thomas Cockshutt had “Most scandalously gone about the Country” stirring people up against Baltimore by telling them that he was a Catholic and by circulating a petition to have the province taken away from Baltimore and given to Hart.

Hall and Cockshutt knew that their petition would wonderfully please Hart, who was “playing his old Game” against Baltimore by claiming that both Baltimore and Guilford were Papists. He had “set the whole country in a Ferment . . . with the cry of Danger from the Papists,” though there was “not in reality the least Danger from them.” Hall’s “being very serviceable to . . . [Hart] in these purposes” made him very dear to the governor, who, according to Henderson, “was mighty earnest to

have the matter against . . . Hall stopped,” and the occasion of the clergy’s petition “was the proper time [for Hart] to threaten” Henderson “out of it.”<sup>38</sup>

In a letter to the Bishop of London dated 18 July 1720 Thomas Brooke, president of the council and acting governor after Hart’s departure,<sup>39</sup> appears to confirm Henderson’s accusations against Hall and Cockshutt. It was with great pleasure that he congratulated the bishop that as a result of Henderson’s good conduct and example the province had “the happy prospect . . . of putting an end to the unhappy disputes that were on purpose raised among the clergy about matters that no way concerned their duty,” that is, “endeavours to misrepresent” the proprietor. He could “with great truth say that no nobleman” could do more than Baltimore had done to convince all Marylanders “of his regard and zeal for the Protestant religion and Interest.”<sup>40</sup>

The petition of the clergy did fail, just as Henderson expected it to. On 2 May 1718 the upper house sent it to the delegates with a copy of Christopher Wilkinson’s commission as commissary of the Eastern Shore and a copy of Queen Anne’s instructions to Hart and asked for a conference committee to hear what the clergy had to say to support it.<sup>41</sup>

The members of the committee claimed to be willing to submit to the discipline of the church, but they would give it no real authority. On 3 May they reported that they considered themselves “obliged by their Duty to God to Yield all due Obedience to the Discipline of . . . [their] Mother Church of England,” but since ecclesiastical jurisdiction had not been exercised in “this Infant Province” in the past they were “in great part Strangers to it’s [*sic*] Powers and Authorities of punishing Crimes and Offences” and therefore were incapable of judging how much power the ecclesiastical courts might have to punish crimes that were already punishable by the courts that

already existed in the province. To give the ecclesiastical courts powers that the common-law courts currently had “would be very grievous to the people.”

Then the members of the committee tried to let the clergy down softly. The consideration of ecclesiastical jurisdiction in the province would require some time, and therefore they suggested that Hart and the two houses consider the issue further.<sup>42</sup> The delegates agreed and, echoing Hart, reported to the upper house that they believed that putting the ecclesiastical laws in force in the province would be altogether impracticable. They referred the issue to that House,<sup>43</sup> which received the message without comment.<sup>44</sup>

Thus the issue of establishing ecclesiastical jurisdiction in the province was dead, although, according to Henderson, Hart pretended that it was still under consideration. Hart, Henderson told the Bishop of London, thought that he had pleased the bishop by pretending to have tried to get the ecclesiastical jurisdiction established in Maryland, but he was pleased himself that the assembly had blocked the effort.<sup>45</sup>

While Henderson blamed Hart and the assembly for the defeat of the petition, Christopher Wilkinson thought that it had failed because some of the clergy themselves objected to the establishing of ecclesiastical jurisdiction and had told the delegates that it would be tyrannical and would “drive people from the Church to the Roman Catholics and Quakers.”<sup>46</sup> Because of the unhappy differences between Henderson and the clergy of the Western Shore, part of the responsibility for the defeat also lay with him.

After telling the Bishop of London that it would be improper for him—Wilkinson—to concern himself with the differences on the Western Shore, he immediately did exactly that. Henderson’s recent freedom in his conversations with Catholics, his unguarded expressions, and his joining with Hart’s enemies—meaning, apparently,



Macnemara — had caused some people to suspect that he was inclined toward Catholicism himself and had caused many others to consider him unfit to exercise the authority of the Bishop of London in the province.<sup>47</sup>

The clergy of the Western Shore had in fact complained to the Bishop of London about Henderson, but by the time Wilkinson was writing two clergymen, Samuel Skippon, rector of St. Ann's Parish in Annapolis, and William Machonchie, rector of Durham Parish in Charles County, had written again to tell him that those unhappy differences had been amicably adjusted. They assured the Bishop that Henderson's "present good management and prudent behavior" together with the clergy's own disposition guaranteed that in the future nothing would "be able to interrupt or disturb that peace and unanimity" that was now so happily settled between Henderson and the clergy.<sup>48</sup>

Henderson laid the blame for his differences with the clergy directly on Hart. Four of the clergy had told him that Hart had instigated the complaint to the Bishop of London against him, that they could not deny it, and that they were very sorry for it.<sup>49</sup> He had not been able to accomplish anything for the good of the Church during Hart's administration, he told the Bishop after Hart had left the province, because Hart's "aim was only to draw the Clergy into projects" against him. It was "almost incredible how far Mr. Hart's malice carried him, even to affect in an unusual and extraordinary manner the little estate" that Henderson had in the province.<sup>50</sup> He thanked God that the colony was rid of Hart, and he hoped that Hart would never return as governor.<sup>51</sup> He heartily forgave Hart for the injuries he had done him, but if Hart were to return many gentlemen, including himself, would have to sell their possessions and leave. He could give many examples of Hart's malicious treatment of himself and others, even his patron and best friend, the proprietor, but he presumed

that it would be as unpleasant for the bishop to read such things as it would be for him to write them.<sup>52</sup>

While Henderson was glad to have Hart out of the province, Christopher Wilkinson lamented his departure. According to Wilkinson, Hart had zealously espoused the bishop's authority and the interest of the church, and he would be the bishop's best source of information on the failure of the effort to establish ecclesiastical jurisdiction there.<sup>53</sup>

Before Hart got back to England, however, Macnemara had already been there. When he went to England sometime after the middle of July 1718<sup>54</sup> to protest the law by which the assembly had just disbarred him<sup>55</sup> he would carry with him Henderson's complaint against Hart to the Bishop of London in person. He also took with him the record of Henderson's visitations of 4-5 December 1717 and 13-14 March 1717/18,<sup>56</sup> and Henderson referred the Bishop of London to Macnemara for a full account of all affairs in the province.<sup>57</sup> Apparently Macnemara also would see the Spanish ambassador about Spain's granting land in the Spanish West Indies for the possible settlement of Catholics from Maryland if Hart remained governor in Maryland.<sup>58</sup>

Macnemara's having an interview with the Bishop of London must have caused Hart some anxiety, though the bishop had consistently supported him against Henderson. He had great reason, the bishop told Henderson in a letter dated 15 April 1718, "to have an esteem for" Hart, who was "at no time disposed carelessly to oppose" his authority in Maryland. Henderson was "formerly of the same sentiment with regard to" Hart, and the bishop would be glad if some way might be found to make Henderson and Hart "return to the mutual good opinion . . . [they] had once had of each other."<sup>59</sup>

He was sorry that Henderson had mistreated Hart, the bishop told the governor

in a letter dated the next day, and he had written to Henderson in terms that he hoped would cause him to explain himself to Hart's satisfaction. If he had dealt with Henderson more tenderly than the occasion required it was only because he did not want to give him any reason to complain that he had been condemned unheard and because he wanted Hart's complaints "redressed without a violent remedy." If Henderson persisted in being disrespectful to Hart, however, he would take proper measures to give Hart full satisfaction. He would do the same for Henry Hall, with whose character he was well pleased. He did not worry about his jurisdiction in Maryland as long as Hart remained governor.<sup>60</sup>

Later the bishop expressed his confidence in Hart to Christopher Wilkinson. He had the greatest assurance of Hart's good disposition toward him and for the service of religion, he told Wilkinson in a letter of 25 August 1718, and he had great reason to be thankful not only for what Hart had done on the petition of the clergy to Hart and the assembly but also for the readiness he had always shown "on all occasions to promote the interest of the Established Church." He hoped for a reconciliation between Hart and Henderson.<sup>61</sup>

In a letter to Henderson dated fifteen days later the bishop continued to support Hart but threw a small bone to Henderson. He had always been inclined to believe that both Hart and Henderson had acted uprightly, and he could not easily believe that Hart would deliberately do anything to affront his authority. He believed that the ecclesiastical jurisdiction could be established in the province only by the assembly's passing a law. That put a different face on Hart's encouraging the clergy to ask the assembly to pass such a law.

The bishop hoped that Hart and Henderson would "mutually forget all past heats." He believed that in all of Henderson's endeavors his intentions were good,

and he would be very sorry if Henderson's efforts miscarried "for want of that conduct which only can direct them to their end."<sup>62</sup>

The bishop might have thought that the assembly's having to pass a law in order to establish ecclesiastical jurisdiction in the province put a new face on Hart's actions, but he did not confront the question of whether Hart knew that the petition of the clergy would fail, as Henderson charged, and that the failure would discredit the idea of ecclesiastical jurisdiction rather than strengthen it, as Henderson also charged.<sup>63</sup>

The quarrel between Henderson and Hart, like the quarrel between Macnemara and Hart, illustrates the difficulty officials in England had knowing what was going on in the colonies. The most telling piece of evidence that Hart was playing a double game is that if he had actually been interested in the assembly's confirming the jurisdiction of the Bishop of London in the province the clergy would not have had to petition for it. Hart himself, in his speech to the two houses at the beginning of the session of 22 April to 10 May 1718, could have proposed that the assembly pass such an act, but he did not do that.<sup>64</sup> The petition of the clergy might have been a whole lot more effective if it had been in support of, rather than instead of, a recommendation from Hart.

Thus Thomas Macnemara was caught up not only in the battle between Anglicans and Catholics but also in a battle among Anglicans themselves, with Hart not only resisting any encroachments on his authority but possibly also harboring secret dreams of soon having the entire province for himself. Regardless of Macnemara's success or failure in presenting Henderson's case to the Bishop of London, his becoming Henderson's procurator of office was another reason for Hart and his other

enemies to fear him and thus to try to destroy him. His prestige in the province was increasing, and his prestige was bringing at least the appearance of power.

When he became procurator of office on 4 December 1717<sup>65</sup> Macnemara not only had already been clerk of the lower house and was still the naval officer of Patuxent, but he had also been a common-councilman, an alderman, and the mayor of Annapolis and was now an alderman again.<sup>66</sup> That was too much power for Hart's leading enemy, and the first chance it had after Macnemara was sworn procurator of office — during its next session of the assembly, in April and May of 1718 — the assembly on the recommendation of Hart and his council<sup>67</sup> disbarred him from practicing law in the province.<sup>68</sup> Unable to practice, he might disappear.

## *Chapter 8*

### *Procurator of Office, 1717-1719*

<sup>1</sup> For the procurator or proctor of office as an attorney, see Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 1207, under both "procurator" and "proctor."

<sup>2</sup> The Bishop of London had ecclesiastical jurisdiction in the colonies. Leonard Woods Labaree, *Royal Instructions to British Colonial Governors, 1670-1776* (2 vols.; New York: D. Appleton-Century Co., 1935), II, Nos. 708 (pp. 489-490), 709 (pp. 490-491).

John Robinson was Bishop of London from 1714 to 1724, and Edmund Gibson from 1724 to 1748. Nelson Waite Rightmyer, *Maryland's Established Church* (Baltimore: Church Historical Society for the Diocese of Maryland, 1956), pp. 60, 72, 87.

<sup>3</sup> These commissaries are not the same as the commissaries-general, of whom there might be one but were often two or three men holding the same office jointly, or the deputy commissaries, of whom there was one for each county. Edith E. MacQueen, "The Commissary in Colonial Maryland," *Maryland Historical Magazine*, XXV, No. 2 (June 1930), pp. 190, 195; Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical

Society, 1953), pp. 39-40, 40-41, 130-132.

MacQueen calls these other commissaries ecclesiastical commissaries (MacQueen, "The Commissary in Colonial Maryland," pp. 190, 192, 194, 197, 198) or bishop's commissaries. *Ibid.*, p. 192. She refers to the office of the commissary-general as the "judicial office of commissary." *Ibid.*, p. 198.

For the ecclesiastical commissary, see also Rightmyer, *Maryland's Established Church*, pp. 37-48, 55, 63-72, 77-81, 83-84; Carol van Voorst, *The Anglican Clergy in Maryland, 1692-1776* (New York: Garland Publishing, Inc., 1989), pp. 26-59.

<sup>4</sup> John Hart to John Robinson, Bishop of London, 6 September 1715, in William Stevens Perry, ed., *Historical Collections Relating to the American Colonial Church* (5 vols. in 4; Hartford: The Church Press, 1870-1878; reprinted New York: AMS Press, 1969), IV, *Maryland*, p. 81.

<sup>5</sup> Bishop of London to Jacob Henderson, 15 April 1718, in *ibid.*, pp. 100-101; Bishop of London to John Hart, 16 April 1718, in *ibid.*, p. 101; Christopher Wilkinson to Bishop of London, 26 May 1718, in *ibid.*, p. 107; Jacob Henderson to the Reverend Dr. Francis Astry, 17 June 1718, in *ibid.*, pp. 112-113; Bishop of London to Christopher Wilkinson, 25 August 1718, in *ibid.*, p. 113; Bishop of London to Jacob Henderson, 9 September 1718, in *ibid.*, pp. 115-116; Jacob Henderson to Bishop of London, 16 July 1720, in *ibid.*, p. 123.

For Jacob Henderson, see also Francis L. Hawks, *Contributions to the Ecclesiastical History of the United States* (2 vols.; New York: John S. Taylor, 1839), II, 154-168.

<sup>6</sup> "Character of the Clergy in Maryland," in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 128; "The Names of the Clergy and of their respective Parishes on the Western Shore in Maryland, 1723," in *ibid.*, p.

130.

<sup>7</sup> Thomas Bordley to the Secretary of the Society for the Propagation of the Gospel in Foreign Parts, 9 August 1725, in *ibid.*, pp. 253-254.

Bordley did not like Henderson, whose ambition made Bordley think that he wanted to be Bishop of the colonies. Henderson's "soft & saintlike manner" made Bordley fear that he would succeed, but nothing "would be more Fatal" or more likely to destroy support for the clergy in the province. Henderson was a man "of a turbulent & haughty spirit, & very contentious, of a wrangling disposition," and delighted "in much busying himself with politicks of state that least concern him."

Henderson, Bordley claimed, refused to take the oaths to the government until Hart peremptorily insisted upon it, and then "in order to evade the taking them" he "desired an eminent magistrate to give him a certificate that he had taken them." When he did not succeed in that subterfuge he finally did take the oaths, but "from being . . . [Hart's] intimate friend, became his utter enemy ever after."

The reason that Henderson did not want to take the oaths, according to Bordley, is that he was tinged with Catholicism. He "was remarkably conversant with the Papists & reputed Jacobites" who were "at enmity with . . . [Hart] from that time." He was "one of those Irish churchmen" whom Bordley had heard say that "he had rather be a papist than a Presbyterian." *Ibid.*

The trouble here is that Bordley could not be trusted, either. According to Charles Calvert, the proprietor's cousin and governor of the province from February of 1719/20 until Benedict Leonard Calvert, Baltimore's brother, succeeded him on 3 July 1727 (Owings, *His Lordship's Patronage*, pp. 120-121), Bordley was "a most malicious man" who because the clergy supported the government had done all he could "against their interest and reputation." During the previous assembly he had



tried to take away part of the support of the clergy. Charles Calvert to Bishop of London, 1 July 1726, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 255-256.

The reason for Bordley's resentment toward Calvert might be that in September of 1721 Calvert dismissed him from the offices of commissary-general and attorney general. Owings, *His Lordship's Patronage*, pp. 130, 134.

For other evidence that Thomas Bordley was a scoundrel, see Anthony D. Lindauer, *From Paths to Plats: The Development of Annapolis, 1651-1718* (Annapolis: The Maryland State Archives and The Maryland Historical Trust, 1997), pp. 20-23 Jane Wilson McWilliams, *Annapolis, City on the Severn: A History* (Baltimore: The Johns Hopkins University Press, 2011), pp. 29-33.

<sup>8</sup> A visitation was a meeting to which the ecclesiastical commissary summoned the clergy and churchwardens within his jurisdiction, where the clergy exhibited their credentials, and where the commissary delivered Articles of Inquiry to the churchwardens. Articles of Inquiry were questions about the minister, the church building and provisions, the lives of the parishioners, the clerk, and the schoolmasters in the parish. Henderson's Visitation, 4-5 December 1717, 13-14 March 1717/18, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 92-99, 126-127.

<sup>9</sup> Henderson's Visitation, 4 December 1717, in *ibid.*, p. 92. Bordley's claim that Henderson was reluctant to take the oaths might be unfair, since while Henderson's commission as commissary was dated 16 February 1715/16 and while he received it in April of 1716 it was only in a letter of 14 March 1716/17 that the Bishop of London ordered him to start exercising his powers under that commission. Henderson's Answers to Queries, after 28 June 1721, in Perry, ed., *Historical Col-*

*lections Relating to the American Colonial Church*, IV, 131-132.

While Henderson must have had that second letter for several months before he took the oaths, there was no reason for him to take the oaths until he was ready to start exercising those powers. At the same time, of course, Henderson's delay in holding this Visitation might have resulted from his hesitation about taking the oaths, though Henderson claimed that it resulted from the opposition he met with in the province. Jacob Henderson to Bishop of London, 17 June 1718, in *ibid.*, p. 109.

<sup>10</sup> 1702, c. 1, *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society 1883-1972), XXIV, 259-260.

<sup>11</sup> Jacob Henderson to Bishop of London, 17 June 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 109-110.

<sup>12</sup> Provincial Court Judgment Record, Liber V. D., No. 3, p. 106; Chapter 9, "Harassment by Indictment, 1712-1719," at Notes 3-4, 70-72.

<sup>13</sup> *Md. Arch.*, XXV, 211-212.

<sup>14</sup> Rightmyer, *Maryland's Established Church*, p. 69. See Note 33 below.

<sup>15</sup> Rightmyer, *Maryland's Established Church*, pp. 69, 186.

<sup>16</sup> Henderson's Visitation, 5 December 1717, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 95; Jacob Henderson to John Robinson, Bishop of London, 17 June 1718, in *ibid.*, pp. 110-111; Henderson's Answers to Queries, after 28 June 1721, in *ibid.*, p. 133.

Henderson does not say just how Hall had threatened the Bishop of London, and the microfilm copy of the charges against Hall, in the Fulham Papers, Lambeth Palace Library, No. 131, are very difficult, and sometimes impossible, to decipher.

<sup>17</sup> Henderson's Visitation, 5 December 1717, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, p. 93.

<sup>18</sup> *Ibid.*, p. 95.

<sup>19</sup> Rightmyer, *Maryland's Established Church*, p. 69-70.

<sup>20</sup> Fulham Papers, Lambeth Palace Library, No. 131; Rightmyer, *Maryland's Established Church*, pp. 69-70; van Voorst, *The Anglican Clergy in Maryland, 1692-1776*, p. 39.

<sup>21</sup> Bishop of London to Jacob Henderson, 15 April 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 100.

<sup>22</sup> Henderson's Visitation, 13-14 March 1717/18, in *ibid.*, p. 96.

<sup>23</sup> Jacob Henderson to Bishop of London, 17 June 1718, in *ibid.*, p. 111.

<sup>24</sup> Jacob Henderson to Bishop of London, 17 June 1718, in *ibid.*, p. 109; Henderson's Answers to Queries, after 28 June 1721, in *ibid.*, p. 132; Rightmyer, *Maryland's Established Church*, p. 70.

The bishop's confusion over whether he actually wanted Jacob Henderson to execute his powers as commissary would appear to support Nelson Waite Rightmyer's claim that the bishop, John Robinson, "was primarily a politician." Rightmyer, *Maryland's Established Church*, p. 70.

<sup>25</sup> Bishop of London to Christopher Wilkinson, 7 October 1717, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 88-89.

<sup>26</sup> *Md. Arch.*, XXXIII, 145-149, 223; Jacob Henderson to Bishop of London, 17 July 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 109-110.

<sup>27</sup> *Md. Arch.*, XXXIII, 152, 223, 227.

<sup>28</sup> *Ibid.*, pp. 154-155.

<sup>29</sup> Jacob Henderson to Bishop of London, 17 June 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 109-110.

<sup>30</sup> Jacob Henderson to the Reverend Dr. Francis Astry, 17 June 1718, in *ibid.*, pp. 112-113.

<sup>31</sup> Rightmyer, *Maryland's Established Church*, pp. 55-56, 77-78.

<sup>32</sup> Henderson's Answers to Queries, after 28 June 1721, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 132.

<sup>33</sup> Governor John Seymour, like John Hart, wanted no challenge to his authority and would not "allow a commissary of the Bishop of London to come into Maryland" at all. Rightmyer, *Maryland's Established Church*, p. 55. That might be why Hall had "refused to act" on his commission as ecclesiastical commissary. *Ibid.*, p. 69.

<sup>34</sup> Jacob Henderson to the Reverend Dr. Francis Astry, 17 June 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 112.

<sup>35</sup> *Md. Arch.*, XXXIII, 146-147. For this meeting of the clergy with Hart, see *ibid.*, pp. 145-149. There is no way to know exactly when this convention met. In their response to Hart's speech the preachers refer to his "most Pious and Excellent Speech" of the day before, but while both the speech and the response are entered into the records of the upper house for 29 April 1718, there is no indication of the date either of the speech or of the response. *Ibid.*, pp. 146-147, 147-149.

<sup>36</sup> Jacob Henderson to Bishop of London, 17 June 1718, in *ibid.*, pp. 109-110.

<sup>37</sup> Christopher Wilkinson to Bishop of London, 26 May 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 106.

<sup>38</sup> Jacob Henderson to Bishop of London, 17 June 1718, in *ibid.*, pp. 109-111.

<sup>39</sup> Owings, *His Lordship's Patronage*, p. 120; Chapter 14, "Gone But Not Forgotten, 1720," at Notes 34-40.

<sup>40</sup> Thomas Brooke to Bishop of London, 18 July 1720, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 125.

<sup>41</sup> *Md. Arch.*, XXXIII, 159, 235

<sup>42</sup> *Ibid.*, pp. 242-243.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*, pp. 164, 243-244.

<sup>45</sup> Jacob Henderson to Bishop of London, 17 June 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 110, 111.

<sup>46</sup> A person might be excused for suspecting that the real concern of these clergymen was that with the formalizing of the powers of the commissaries they might have to clean up their lives or else risk losing their livings.

<sup>47</sup> Christopher Wilkinson to Bishop of London, 26 May 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 106-107.

<sup>48</sup> Samuel Skippen and William Machonchie to Bishop of London, 8 May 1718, in *ibid.*, pp. 105-106.

<sup>49</sup> Jacob Henderson to Bishop of London, 17 June 1718, in *ibid.*, pp. 111-112.

<sup>50</sup> Henderson does not say how John Hart affected his "little estate."

<sup>51</sup> When Hart left the province in May of 1720 he was presumably supposed to be gone for only a year to recover his health (*Md. Arch.*, XXV, 352-355; XXXIII, 497, 586-587, 603), but he would never return to the province. See Chapter 14, "Gone But Not Forgotten, 1720," at Note 19.

<sup>52</sup> Jacob Henderson to Bishop of London, 16 July 1720, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 123.

Apparently Henderson's troubles with the clergy were not *all* Hart's fault. Henderson was going to require each clergyman to pay him a synodal, which is "A tribute or payment in money paid to the bishop or archdeacon by the inferior clergy, at the Easter visitation" (*Black's Law Dictionary* (6th edition), p. 1450), as well as

a procuration, which was “a particular quota of provisions or a fixed sum of money given by parochial churches of the Church of England to a bishop or archdeacon at the time of his visitation,” (*Webster’s Third New International Dictionary of the English Language Unabridged* (1981)), but the Bishop of London would not support him in these impositions. Bishop of London to Jacob Henderson, 15 April 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 100.

The wording of the bishop’s letter is not clear. It could mean that Hall was the only minister of whom Henderson was going to require these payments, or it could mean that Hall was the only minister who resisted the demand: “. . . your demand upon M<sup>r</sup>. Hall, of Synadodals [*sic*] and Procurations, is not to be supported, being without precedent either in your or any other Colony, and the detaining his orders under pretence of that right is what I cannot approve of . . . .” Bishop of London to Jacob Henderson, 15 April 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 100.

Carol van Voorst implies that Henderson required the synodals and procurations only from Hall (van Voorst, *The Anglican Clergy in Maryland, 1692-1776*, p. 39), but Nelson Waite Rightmyer makes it appear that Henderson required the fees from all of the clergy of the Western Shore and that only Hall refused to pay. Rightmyer, *Maryland’s Established Church*, p. 69.

For definitions of synodals and procurations, see also *ibid.*, p. 69n.

The Bishop of London also reminded Henderson that the clergy had complained against him for “assembling them together at unseasonable times of the year . . . .” Bishop of London to Jacob Henderson, 15 April 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 100.

<sup>53</sup> Christopher Wilkinson to Bishop of London, 18 May 1720, in *ibid.*, p. 117.

<sup>54</sup> Provincial Court Judgment Record, Liber P. L., No. 4, pp. 3, 76-77.

<sup>55</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 525-527. For Macnemara's disbarment and his trip to England in 1718, see Chapter 11, "Disbarred Again, 1718"; Chapter 12, "Reinstatement and Outrage, 1719;" at Note 6; Chapter 7, "Respectability, 1713-1719," Note 86.

<sup>56</sup> The Visitations of 4-5 December 1717 and 13-14 March 1717/18, recorded in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 92-96.

<sup>57</sup> Jacob Henderson to Bishop of London, 4 September 1718, in *ibid.*, p. 114.

<sup>58</sup> The National Archives (PRO), *Calendar of State Papers: Colonial Series*, XXXV, No. 501; Beatriz Betancourt Hardy, "Papists in a Protestant Age: The Catholic Gentry and Community in Colonial Maryland, 1689-1776" (Ph. D. dissertation: The University of Maryland, 1993), pp. 165-166; Chapter 9, "Harassment by Indictment, 1712-1719," at Note 119.

<sup>59</sup> Bishop of London to Jacob Henderson, 15 April 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, p. 100.

<sup>60</sup> Bishop of London to John Hart, 16 April 1718, in *ibid.*, p. 101.

<sup>61</sup> Bishop of London to Christopher Wilkinson, 25 August 1718, in *ibid.*, pp. 113-114.

<sup>62</sup> Bishop of London to Jacob Henderson, 9 September 1718, in *ibid.*, pp. 115-116.

<sup>63</sup> Jacob Henderson to Bishop of London, 17 June 1718, in *ibid.*, pp. 109-110.

<sup>64</sup> *Md. Arch.*, XXXIII, 119-123, 202-206.

<sup>65</sup> Jacob Henderson's Visitation, 4 December 1717, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, 92.

<sup>66</sup> See Chapter 7, “Respectability, 1713-1719.”

<sup>67</sup> *Md. Arch.*, XXXIII, 181-182, 258-259.

<sup>68</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 525-527. See also Chapter 11, “Disbarred Again, 1718.”



## *Chapter 9*

### *Harassment by Indictment, 1712-1719*

If Thomas Macnemara, this alleged friend of the Catholics and reputed borderline barbarian, could become the clerk of the lower house and a member of the common council of Annapolis and then an alderman and even mayor, the divisions in the province must have been serious. The dissidents were more than just a malcontent and malevolent minority: they were a real danger to the newly-emerged, exploitive, and still insecure governing class. To compound the threat, Macnemara could have become naval officer of Patuxent only through the favor of Baltimore and Guilford, and his prosecuting suits for Maurice Birchfield meant that he had the ears of the officials in England and therefore that his presence in the province increased the danger of expanded interference from there. His being procurator of office for Jacob Henderson gave him a route to the Bishop of London and must further have increased his prestige.

The more prestigious Macnemara became the more dangerous he would be, and thus he had to be neutralized if he could not be destroyed. In 1710 authority had not been able to hang him, but possibly it could harass him sufficiently that he would leave the province. If that did not work, the assembly could always disbar him, as it eventually would do — twice.

By 1712 William Bladen, who as attorney general represented the ruling class,

was out to get Macnemara for whatever he could get him for, and after Macnemara became naval officer of Patuxent in the summer of 1717 and at about that same time allegedly called Bladen a “Blockhead booby”<sup>1</sup> the attorney general intensified his campaign of harassment. At the provincial court for September of 1717 alone he got six indictments against the popular lawyer, though he prosecuted none of them successfully.

If Bladen was generally unsuccessful in prosecuting his indictments he at least had the dual satisfaction of knowing not only that his harassment was making Macnemara’s life much more difficult than it otherwise would have been but also that he was properly impressing powerful Protestants. Since Bladen’s wife was a Catholic,<sup>2</sup> that might have been especially important to him: every minute of his life he had to prove that she had not contaminated him. Harassing Macnemara would help him do that.

Bladen could also have the third satisfaction of knowing that all of the charges against Macnemara were costing him a lot of money. At the provincial court for September of 1717 alone, where Bladen got the six indictments against Macnemara, the justices awarded a total of 2440 pounds of tobacco to witnesses for Macnemara for their attendance and itinerant charges.<sup>3</sup> Since in March of 1710/11 the justices of Charles County valued the mare that John Blee had allegedly stolen from Edward Philpott at five hundred pounds of tobacco,<sup>4</sup> that was a fair amount of money. And it does not include all of the other costs in these cases or the charges in the other actions against Macnemara.

In addition to the second indictment for allegedly attempting to bugger Benjamin Allen, which Bladen got at the provincial court in October of 1712,<sup>5</sup> from April

of 1715 through July of 1718 he got ten indictments against Macnemara in the provincial court and one in the Anne Arundel County court. Four of the eleven indictments were for allegedly taking excessive fees as an attorney; one was for allegedly collecting fees from a man who had not employed him in the cases for which he collected the fees; three were for alleged assaults; two were for seditious speech; and one was for allegedly recovering more money from a planter than the king had coming and converting the difference to his own use.

The disposition of these indictments is powerful evidence of Bladen's incompetence or nastiness or both. He prosecuted *none* of them successfully, and four of them he did not prosecute at all. On three of the eleven indictments petit juries found Macnemara not guilty;<sup>6</sup> one the provincial justices struck off at the complainant's request because he could not maintain it;<sup>7</sup> two indictments the provincial justices quashed for reasons that do not appear in the record;<sup>8</sup> on one Macnemara received the benefit of the king's general pardon before he was ever tried because the alleged offense had occurred before 1 May 1717;<sup>9</sup> and four of the indictments were never tried but dragged on until Macnemara died.<sup>10</sup>

In addition to these eleven indictments, Bladen unsuccessfully prosecuted Macnemara on a *scire facias* for the forfeiture of his bond for his good behavior after William Dobson accused Macnemara of assaulting him, and he brought another action against him on a *scire facias* that the provincial justices ordered struck off and of which no details have emerged.

Besides all of that, grand juries at the provincial court returned *ignoramus* three of Bladen's bills of indictment against Macnemara, two of them simply revisions of the two indictments that the provincial justices had quashed and the third for allegedly taking excessive fees in another case, and a grand jury at the Baltimore County

court returned *ignoramus* Bernard White's bill of indictment against him for an alleged assault.

After Macnemara was branded in the hand at the provincial court for October of 1710 for the death of Thomas Graham, prosecutions continued with scarcely an interruption. Sometime after 22 December 1710 Macnemara went to England; in April of 1711 Bladen got the faulty indictment against him for allegedly assaulting and attempting to bugger Benjamin Allen; by 3 June 1712 Macnemara was back in the province; at the provincial court for July of 1712 he asked to be tried immediately for the alleged assault and attempted buggery but the justices delayed his trial until the next court because Bladen had to attend the council as clerk and because the July court was not a jury court; and in October Bladen got a corrected indictment against him for the alleged assault on and attempted buggery of Benjamin Allen. Macnemara pleaded guilty to the assault but not guilty of the attempted buggery, and the justices fined him fifteen hundred pounds of tobacco for the assault and dismissed the more serious charge.<sup>11</sup>

At that same provincial court for October of 1712 Bladen dug almost exactly six years into the past for another charge against Macnemara. He sent before the grand jury a bill of indictment in which he alleged that way back on 4 October 1706 Macnemara, as one of the attorneys in the provincial court, "did by CouLOUR of his Office" and in violation of his oath as an attorney "Extortiously and Injuriously take and Exact" from John Brannock, a gentleman, an attorney,<sup>12</sup> and later a delegate from Dorchester County,<sup>13</sup> sixteen hundred pounds of tobacco for defending him in two actions of debt brought by Edward Sommersett in the provincial court. The attorney's fee in the provincial court in 1706 was four hundred pounds of tobacco.<sup>14</sup> The

grand jury returned this indictment *ignoramus*, and on Macnemara's request the provincial justices cleared him by proclamation and discharged him with his fees.<sup>15</sup>

Two courts later — at the provincial court July of 1713 — Macnemara sued Brannock in an action of trespass on the case for false accusation and claimed damages of five hundred pounds sterling. In a special verdict at the provincial court for April of 1714 a petit jury found that Brannock had accused Macnemara “falsely and Injuriously & of his Malice forethought” but did not establish Macnemara's damages, and Brannock and the provincial justices managed to stretch the case out through sixteen sessions of the provincial court and for just over five years before Macnemara, outside the country and possibly too sick or too discouraged or too distracted to hire a lawyer to act for him in his absence, at the provincial court for September of 1718 defaulted<sup>16</sup> and therefore had to pay not only his own costs but also Brannock's.<sup>17</sup>

Later Bladen would be more successful in getting indictments against Macnemara for allegedly taking excessive fees, but he would be no more successful in prosecuting them. In the meantime he prosecuted Macnemara on some alleged assaults, but with a characteristic lack of success. At the provincial court for April of 1714, two months before the delegates appointed Macnemara their clerk, Anthony Ivy<sup>18</sup> swore that he was afraid that Macnemara would do him bodily harm. The justices ordered Macnemara to give bond of twenty pounds sterling with two sureties of ten pounds sterling each to guarantee his appearance at the next provincial court and to guarantee his good behavior in the meantime toward the queen, toward all of the queen's people, and especially toward Anthony Ivy. Macnemara did provide the security, with Daniel Dulany, a gentleman from Prince George's County, and Henry

Wharton, a gentleman from Charles County, as his sureties.<sup>19</sup>

Macnemara did appear at the provincial court for July of 1714, but the record does not state what action the justices took there.<sup>20</sup> Apparently they continued his bond to the next court after William Dobson appeared and swore that Macnemara had assaulted and beat him “on Munday last.”<sup>21</sup>

On 25 September 1714 Bladen, having learned from Robert Goulesborough at the provincial court for July of 1708 that he had to use a *scire facias* instead of a *capias ad respondendum* to recover a bond,<sup>22</sup> sued out of the provincial court a *scire facias* directed to the sheriff of the city of Annapolis in which he alleged that on 13 April 1714 Macnemara entered bond of twenty pounds sterling before the provincial court to guarantee his appearance at the next provincial court and to guarantee his good behavior in the meantime toward all the queen’s subjects, and especially toward Anthony Ivy, but that afterwards, in Annapolis on the Monday after Pentecost — the eighth Monday after Easter — in the same year,<sup>23</sup> Macnemara assaulted Dobson, a carpenter from Annapolis, and “with Gunns fists and Staves then and there did beat wound and Evilly Intreat”<sup>24</sup> him and thus forfeited his bond. Therefore the sheriff by good and lawful men of his bailiwick should make known to Macnemara that he should appear at the provincial court for April of 1715, “if to him it . . . [should] Seem meet,” to show whether he could give the court any reason why the twenty pounds sterling should not “be levyed upon his body goods or Chattells Lands or Tenements.” The sheriff would also have before the court the names of the persons before whom he summoned Macnemara as well as the writ of *scire facias*.

Thomas Reynolds, the sheriff of Anne Arundel County and therefore of Annapolis, returned the writ to the provincial court for April of 1715 with the endorsement that on 11 April 1715 before John Beale and George Valentine, “two good and law-

full men” of his bailiwick, he served notice on Macnemara that he should appear at this court to show why he should not forfeit his bond to George I. Macnemara appeared and imparled to the next court, and at the provincial court for September of 1715 he imparled again. At the provincial court for May of 1716 he asked for a reading of the writ, and after the writ was read he complained that he was “Grievously [*sic*] Vext and disturb’d and that unjustly” because the *scire facias* and the matter contained in it were not sufficient in law and that therefore he had no need to answer it.

He did, however, answer. He assured the justices that “as to the Comeing with force and Arms he . . . [was] in nothing thereof Guilty” and put himself upon the country. After Bladen agreed to the trial by jury, Macnemara added that “as to the residue” of the alleged trespass and assault the king should not prosecute him because in Annapolis on the Monday after Pentecost mentioned in the writ Dobson assaulted Macnemara’s servant James Horsley, who was serving Macnemara for four full years after 23 April 1712, and would have “wounded Shott kil’d [*sic*] and Evilly Intreated” Horsley even though Horsley had committed no trespass or misdemeanor against Dobson or any of the king’s subjects or his crown or dignity. Macnemara therefore defended Horsley, as he claimed it was lawful for him to do, and thus “any assault Battery wounding or Evill Treatment” that had occurred was the result of Dobson’s assault on Horsley and Macnemara’s defense of him. Finally, Macnemara told the court that he was ready to verify his allegation and asked for judgment in his favor.

Bladen insisted that Macnemara should forfeit his bond because he did assault Dobson “of his own wrong and without any Such Cause” as he alleged and “did beat wound and Evilly intreat [Dobson] so that of his Life it was dispaired.”<sup>25</sup> Bladen then asked that the issue be inquired into by the country.

Since Macnemara had already put himself upon the country, the justices ordered Reynolds to summon twelve men to hear the case. The jurors decided that Macnemara had not assaulted Dobson, just as Macnemara had insisted, and did not beat Dobson “So that of his Life it was dispaired” against the king’s peace as Bladen in the *scire facias* had claimed. After hearing the verdict the justices ruled that the king “Take nothing by his writt” and released Macnemara. The record says nothing about the fees in the case.<sup>26</sup>

For the second time in his career, therefore, Macnemara was prosecuted for a fight that somebody else had started. In his alleged assault on Matthew Beard on 10 April 1704, of which a petit jury at the provincial court for May of 1704 found him not guilty after he claimed that Beard had attacked him first,<sup>27</sup> he was defending himself, and in his alleged assault on William Dobson he was defending his servant James Horsley. When Macnemara defended himself or his servant, however, *he* was the one who was prosecuted.

While this case was still in progress Macnemara had other troubles. At the Baltimore County court for March of 1714/15<sup>28</sup> the Reverend Thomas Bayley swore that he had heard Macnemara swear five profane oaths on the day he brought the charge, and the justices fined Macnemara according to law.<sup>29</sup> Since the fine for cursing or swearing was five shillings,<sup>30</sup> the total fine must have been twenty-five shillings. One week later the justices of Anne Arundel County fined Macnemara one hundred pounds of tobacco for not attending court as an attorney.<sup>31</sup>

Next it was the turn of the provincial court again, where Bladen was no more successful in prosecuting Macnemara and Horsley for alleged assaults on John Navarre and his wife Mary than he was in the prosecution of the alleged assault on



William Dobson. The circumstances surrounding the indictments might indicate that in these cases Macnemara and Horsley were again victims rather than aggressors — or at least no more guilty than the Navarres were.

When Macnemara appeared at the provincial court for April of 1715 under bond of twenty pounds sterling to guarantee his good behavior, especially toward Anthony Ivy, he was also under a second bond, this one of sixty pounds sterling with James Maxwell, one of the justices of Baltimore County,<sup>32</sup> as his surety for thirty pounds sterling, to answer the complaint of John Navarre and in the meantime to be of good behavior toward all of her Majesty's good subjects. On Macnemara's petition, the justices discharged him from the recognizance.<sup>33</sup>

James Horsley also appeared at this court under bond of thirty pounds sterling, with Macnemara as his surety of fifteen pounds sterling, to guarantee his appearance to answer John Navarre's complaint and to be of good behavior in the meantime. On his appearance the justices also discharged him from the recognizance.<sup>34</sup>

At this court the grand jurors charged that in Annapolis on 28 October 1714 Macnemara assaulted Mary Navarre "with Clubs, fists, and staves" while she was "in the Peace of God and our Lord the King" and beat her "soe that of her Life it was Dispaired and other harms" to her "then and there did" to her great damage, against the peace of the king and his Crown and dignity.<sup>35</sup> The grand jurors also charged that in Annapolis on the same day Horsley, who was a joiner from St. Anne's Parish in Anne Arundel County,<sup>36</sup> assaulted Mary Navarre in the same way and with the same results.<sup>37</sup> Finally, the grand jury returned an indictment against Macnemara for assaulting Navarre himself on a date that the record does not specify.<sup>38</sup>

The provincial justices required Macnemara to enter into a new recognizance of twenty pounds sterling with two sureties of ten pounds sterling each to guarantee

that he would appear at the next provincial court to answer to the two indictments, that he would not depart the court without its license, and that he would keep the peace toward his Majesty and all of his people in the meantime. They also required Horsley to enter a recognizance of twenty pounds sterling, with one surety of ten pounds sterling, with the same conditions. Daniel Dulany and John Beale<sup>39</sup> became Macnemara's sureties, and Macnemara became surety for Horsley.<sup>40</sup>

At the provincial court for September of 1715 Macnemara, acting as attorney for himself as well as for Horsley, asked for continuances of all three cases to the next court, and the justices granted the continuances.<sup>41</sup>

The three cases were finally settled at the provincial court for May of 1716, the same court at which the petit jury found Macnemara not guilty of assaulting William Dobson.<sup>42</sup> With Thomas Bordley now acting as his counsel, Horsley pleaded not guilty, and after a petit jury that included six of the men who acquitted Macnemara of assaulting Dobson found him not guilty the justices discharged him.<sup>43</sup>

Macnemara, acting as his own attorney, pleaded not guilty to the indictment for his alleged assault on Mary Navarre and asked for a trial by jury. A petit jury, which included none of the men who acquitted Horsley but did include one man who served on the petit jury that acquitted Macnemara of assaulting William Dobson, found Macnemara not guilty, and the justices also discharged him.<sup>44</sup>

Macnemara's indictment for assaulting John Navarre was never tried. Navarre asked the justices to strike off the indictment, which the grand jurors had returned against Macnemara "some Courts past," because he could not maintain it, and the justices did order it struck off.<sup>45</sup>

Since this indictment is not written out, the details of Macnemara's alleged assault on Navarre do not survive, but it appears likely that all three of these indict-

ments resulted from a couple of brawls at the Navarres' inn in Annapolis<sup>46</sup> and that the two petit juries concluded either that the Navarres had attacked first or that it was impossible for them to fix the blame.

For when Macnemara and Horsley appeared at the provincial court for April of 1715 John and Mary Navarre themselves had already been indicted for assaulting James Horsley and Richard Rotherfoot on 22 October 1714, six days before Macnemara and Horsley were alleged to have assaulted the Navarres. Thus the apparent brawl at the Navarres' inn on the twenty-eighth might have been a continuation of similar trouble six days earlier.

At the Anne Arundel County court for November of 1714 the grand jurors charged that in St. Anne's Parish in Anne Arundel County on 22 October 1714 Navarre, an innholder from St. Anne's Parish, assaulted Richard Rotherfoot,<sup>47</sup> and in a separate indictment they charged that at the same place and on the same day John and Mary Navarre assaulted James Horsley.<sup>48</sup> The justices immediately ordered the sheriff of Anne Arundel County, Thomas Reynolds, to have the Navarres before the court for March of 1714/15, and when they appeared at that court the justices ordered Navarre to give security of twenty pounds sterling, with one surety of ten pounds sterling, to guarantee his appearance to answer to the indictment for assaulting Rotherfoot, not to depart the court without its license, and to be of good behavior in the meantime. On the other indictment the justices also ordered the Navarres to give security of twenty pounds sterling each with one surety of ten pounds sterling and with the same conditions. Edward Coyle, a tailor from Annapolis, became the surety in both cases.

Later at that same court the Navarres' attorney, Wornell Hunt, produced a writ of *certiorari* in each case to remove the proceedings to the provincial court for April

of 1715.<sup>49</sup> In each case the Navarres had to enter a new recognizance of twenty pounds sterling with two sureties of twenty pounds sterling each, as the law of England required, to guarantee their pursuit of the *certiorari*.<sup>50</sup> Wornell Hunt and Edward Coyle became the sureties in both cases.

At the provincial court for April of 1715 the Navarres pleaded not guilty and put themselves upon the country, and the justices continued the cases to the next court. In September the justices on the Navarres' request granted continuances again. Finally at the provincial court for May of 1716, the same court at which Macnemara and Horsley were acquitted of the assaults on Mary Navarre, Rotherfoot and Horsley on Navarre's request refused to prosecute the Navarres further on the two indictments, and Bladen entered a *nolle prosequi* in each case.<sup>51</sup>

Thus it is possible that the striking off of the indictment against Macnemara for allegedly assaulting John Navarre was part of a deal between the two men. Navarre might have decided that after the petit juries found Macnemara and Horsley not guilty of assaulting Mary Navarre there was little chance that a jury would convict Macnemara of assaulting *him* and that since he and his wife might still be convicted of assaulting Horsley and Rotherfoot he had better make a deal if he could. He might therefore have given up his prosecution of Macnemara in return for Horsley's and Rotherfoot's giving up their prosecutions of him and his wife.

While the two indictments against Macnemara for the alleged assaults on John and Mary Navarre and Bladen's suit for the forfeiture of his bond for the alleged assault on William Dobson, as well as the two indictments against John and Mary Navarre, were all settled at the provincial court for May of 1716, Macnemara's life became no less eventful. When the provincial court opened two months later — on

3 July 1716 — the justices ruled that any attorney who did not attend court would be fined not more than one thousand pounds of tobacco and then immediately fined Macnemara two hundred pounds of tobacco for not being present.<sup>52</sup> At a special court of oyer and terminer in Annapolis on 10 July 1716 — the day after the provincial court closed<sup>53</sup> — Macnemara served as counsel for William FitzRedmond and Edward Coyle, who were found guilty and fined for drinking the Pretender's health and speaking contemptibly of the king.<sup>54</sup> He signed the record of the lower house as its clerk for the last time for the session that ended on 10 August 1716.<sup>55</sup> At the provincial court for September of 1716 Bladen brought another action on a *scire facias* against him, and Macnemara imparled until the next court.<sup>56</sup> On 4 October 1716 he appeared before Hart and his council in an inquiry into his character, his principles in religion, and his loyalty to and affection for the king and “his most August Family,” apparently as a result of his serving as counsel for FitzRedmond and Coyle, and in public a week later — on 11 October 1716 — he allegedly compared Hart and his council to the Spanish Inquisition for their efforts.<sup>57</sup> Sometime after that he left for England to try to get Hart fired<sup>58</sup> and, according to Hart, to lobby for the collectorship of Patuxent,<sup>59</sup> and apparently he returned to Maryland sometime before the provincial court met on 9 April 1717.<sup>60</sup> At that court the justices ordered Bladen's action on the second *scire facias* struck off. Since no details of the action remain, there is no way to know what Bladen thought Macnemara had done this time.<sup>61</sup>

Once he was back in the province Macnemara got into trouble with his usual efficiency. Problems with William Bladen were festering, and in a letter dated either 22 June or 12 July 1717<sup>62</sup> Macnemara asked Guilford to intervene. Guilford, however, refused “to meddle at all with the Proposall” between Macnemara and Bladen.<sup>63</sup> At the Baltimore County court for August of 1717 the grand jury returned *ignoramus*

a bill of indictment against Macnemara in which the clerk of indictments, Bernard White, charged that on 6 August 1717, the day the court opened, he assaulted Patrick Murphy, and the justices therefore discharged him.<sup>64</sup>

At the Anne Arundel County court a week later Bladen, still the attorney general, complained that on 15 August 1717 Macnemara abused him and “Call’d him Blockhead booby and Gave him the Lye thrice,” which apparently means that Macnemara had called him a liar three times.<sup>65</sup> Vachel Denton, who later would be clerk of the secretary’s office and of the provincial court, register in chancery, and clerk of the prerogative office,<sup>66</sup> swore that Bladen was telling the truth. The justices ordered Macnemara to give security of twenty pounds sterling with one surety of ten pounds sterling to guarantee his appearance at the November court and to guarantee his good behavior, especially toward Bladen, in the meantime. Zachariah Maccubbin, a planter from Anne Arundel County, became his surety.<sup>67</sup> When Macnemara appeared at the November court, the justices discharged the recognizance<sup>68</sup> and took no action against Macnemara for his alleged insult to Bladen.

In the meantime Bladen apparently decided that he would teach Macnemara not to mess with him, and at the same time he might be able to weaken the troublesome lawyer politically. That summer Hart had appointed Macnemara naval officer of Patuxent, apparently on orders from Baltimore and Guilford,<sup>69</sup> and a few convictions might reduce Macnemara’s status with their Lordships.

At the provincial court for September of 1717 — within four weeks of his complaining that Macnemara had called him a blockheaded booby and had given him the lie three times<sup>70</sup> and only two months or so after Macnemara became naval officer of Patuxent — Bladen got six indictments against him.<sup>71</sup> Four of the indictments were for allegedly taking excessive fees; one was for allegedly collecting fees from

a man who had not hired him as an attorney in the cases for which Macnemara collected the fees; and the sixth was for allegedly speaking seditiously against Hart and threatening to arrest him.

Bladen successfully prosecuted none of these indictments. In two cases petit juries found Macnemara not guilty; the provincial justices quashed two of the indictments; and the last two indictments trailed along until Macnemara died. The assembly would use the two pending indictments, together with two later untried indictments, against him when in 1719 it passed the second act disbaring him.<sup>72</sup>

After the grand jury returned the six indictments the provincial justices at Bladen's request ordered Macnemara to give bond of three hundred pounds sterling, with two sureties of £150 sterling each, to guarantee his appearance from day to day during that session of the court to answer to the indictments as he was required, "to stand and abide" the judgment of the court, not to depart the court without its permission, and to behave himself in the meantime. Macnemara did give the security, with Charles Carroll Esquire of Annapolis and Roger Mathews, a gentleman from Baltimore County, as his sureties.<sup>73</sup>

Immediately after the grand jury returned the six indictments the justices ruled that as soon as the sheriff of Calvert County returned the summonses for the witnesses for the proprietor and for Macnemara the indictments would be tried,<sup>74</sup> and four of the six indictments were disposed of at this court. In two cases petit juries found Macnemara not guilty, and two of the indictments the justices quashed.

In the first case in which the petit jurors found Macnemara not guilty the grand jurors charged that on 8 April 1715 Macnemara as an attorney in the Calvert County court "by Colour of his Office . . . did Extortiously and Injuriously ask and demand of and from" William Richardson, a planter from Calvert County, two hundred

pounds of tobacco for representing him in an action of trespass on the case against John Talbot, another planter from Calvert County, even though the debt or damages in the action did not exceed two thousand pounds of tobacco or ten pounds sterling. For actions of those amounts or below in a county court the attorney by was supposed to receive only one hundred pounds of tobacco.<sup>75</sup>

The grand jurors charged further that Macnemara “Procured an Execution under the hand of the honourable Samuel Young,” one of the justices of the provincial court, dated 3 December 1715 and requiring John Brome, the sheriff of Calvert County, to collect from Richardson and several other people the amounts each was supposed to owe him and to turn the amounts “or such part thereof as he should so Collect” over to Macnemara or his order with all convenient speed. If anyone on the list refused or delayed making payments, Brome was to levy the amount on his “body Goods or Chattells.” The only witnesses to the indictment were John Brome and “W<sup>m</sup> Richardsons Oath.”

Macnemara pleaded not guilty and put himself upon the country; Bladen agreed to a trial by jury; the petit jury found Macnemara not guilty; and the justices discharged him with his fees only.<sup>76</sup>

In the second case in which the petit jury found Macnemara not guilty the grand jurors charged that in Calvert County on 1 April 1716 Macnemara demanded and took the same excessive fee from John Eastwood, also a planter from Calvert County, for prosecuting an action of trespass on the case for Eastwood against Robert Freeland, another planter from Calvert County, even though again the original debt or damage that Eastwood claimed from Freeland did not exceed two thousand pounds of tobacco or ten pounds sterling. In this indictment the grand jurors said nothing about Macnemara’s having got execution of the debt. The only witnesses to this



indictment were John Brome, John Eastwood, and “The Execution.”

Again Macnemara pleaded not guilty; again the petit jurors found him not guilty; and again the justices discharged him with his fees.<sup>77</sup> Nobody served on both petit juries against Macnemara.

Macnemara’s acquittals in these two cases do not necessarily mean that he did not receive higher fees than the law specified. Aside from the possibility that the petit jurors made the wrong decision, it is also possible that the justices of Calvert County had nullified that law there, just as the justices of Prince George’s County had. At their court for August of 1710 those justices, revealing their sympathy for attorneys as well as their contempt for the assembly, made the law of 1708 on attorneys’ fees<sup>78</sup> all but irrelevant by changing the attorney’s oath to read that he would take no fees beyond those established by act of assembly except when his clients were willing to pay him more,<sup>79</sup> and it is possible that the justices of Calvert County had done the same thing. Since the records of Calvert County have not survived, there is no way to check.

In one of the two indictments that the provincial justices quashed the grand jurors also charged Macnemara with taking excessive fees, while in the other they charged him with collecting fees from a man who had not hired him as an attorney in the cases for which he had collected the fees. In the first of these cases the grand jurors charged that on 10 April 1715 Macnemara demanded of Bryan Quinn, another planter from Calvert County, four hundred pounds of tobacco for defending Quinn’s wife Mary on a presentment against her at the Calvert County court for April of 1715 when in reality Quinn owed Macnemara no such fee, and that Macnemara got an execution against Quinn dated 3 December 1715 from Samuel Young.

In this case Bladen had even less evidence than he had in the first two. The

only witnesses to this indictment were John Brome and “The Execution”: apparently even Bryan Quinn, the alleged victim of the crime, did not give evidence.

On 10 September 1717, the first day of the court and thus the same day on which the grand jury returned the indictment, the provincial justices quashed it because it was insufficient. Again, however, Macnemara had to pay his fees.<sup>80</sup>

How the indictment was insufficient is not clear, but, since at the provincial court for April of 1718 Bladen would try to get Macnemara indicted for this alleged offense again, with the date of the alleged offense changed from 10 April 1715 to 10 April 1716,<sup>81</sup> the justices might have thought that he had his date wrong.

In the second indictment that the provincial justices quashed, the grand jurors charged that in Calvert County on 10 April 1715 Macnemara demanded of Daniel Emory, still another planter from Calvert County, two hundred pounds of tobacco for two attorney’s fees, one for prosecuting an action that Emory had brought against William Vaughan at the Calvert County court and the other for defending Emory in an action that Roger Boyce had brought against him in the same court. Emory owed Macnemara nothing, the grand jurors charged, because he had not employed Macnemara as his attorney in either case. Finally, the grand jurors charged that Macnemara got an execution against Emory dated 3 December 1715 from Samuel Young. The witnesses to this indictment were John Brome, “The Execution,” and “Dan<sup>l</sup> Emorys Oath.”

For reasons that do not appear the provincial justices also quashed this indictment on the same day on which the grand jurors returned it.<sup>82</sup> Again it appears that Bladen might have thought he had his dates wrong, since at the provincial court for April of 1718 he would try and fail to get Macnemara indicted again on this charge after changing the date of the alleged offense from 10 April 1715 to 10 April 1716,

just as he did in the other case, and the date of the execution from 3 December 1715 to 3 December 1716.<sup>83</sup>

In the second case that the grand jurors mention in this indictment Macnemara might have been Emory's attorney even though Emory had never hired him. The action that Roger Boyce had brought against Emory might have been a non-litigious action of debt on a penal bond,<sup>84</sup> an action in which the defendant agreed in advance that he would not challenge a suit on that bond and that any attorney could appear for him and plead *cognovit actionem*, which means that he admitted the debt;<sup>85</sup> *non sum informatus*, in which the attorney stated that the defendant had not informed him how to plead and that had the same effect as the plea *cognovit actionem*;<sup>86</sup> or *nihil dicit*, which means that the defendant said nothing material — or defaulted — and again had the same effect as the plea *cognovit actionem*.<sup>87</sup>

Such a case, the purpose of which apparently was to get the payment of a debt recorded in the most permanent records of the province, could be settled by one justice, and the justice before whom the plaintiff's attorney brought the action could appoint any handy attorney to represent the defendant.<sup>88</sup> Thus in such a case the defendant had nothing to say about who would represent him, and therefore Macnemara might have represented Emory in the action. Since the records of the Calvert County court have not survived, again there is no way to check.

The last two indictments that the grand jury returned against Macnemara at the provincial court for September of 1717 were never tried.<sup>89</sup> In the first of these the grand jury charged that on 30 September 1716 Macnemara "deceitfully, Injuriouly and unlawfully did Exact, take and receive" from John Brannock, a gentleman from Dorchester County and apparently the same John Brannock who complained about

Macnemara five years earlier,<sup>90</sup> 1112 pounds of tobacco that he pretended was due him “for certain Additional Cost of Suit” on a *supersedeas*<sup>91</sup> that Ed Brannock, a planter from Dorchester County, had obtained on a judgment for eleven thousand pounds of tobacco and 817 pounds of tobacco costs recovered against him in the provincial court as well as for Macnemara’s costs and expenses on a writ of *audita querela*<sup>92</sup> that Edward Newton of Dorchester County had brought against Macnemara<sup>93</sup> in the provincial court. Macnemara had claimed that John Brannock was liable for these costs, with interest, while “in truth no such quantity of Tobacco for such additional or other Costs and Expences” was due to him at all. In claiming the tobacco Macnemara had acted to John Brannock’s great damage and in contempt of the laws of the province and of the proprietor’s good rule and dignity.<sup>94</sup>

The second indictment that was never tried resulted from Macnemara’s battle with John Hart and reveals what eighteenth-century authority thought of freedom of expression for unpopular people. The grand jurors charged that when in the statehouse in Annapolis on 13 July 1717 Michael Howard told Macnemara that he had got a *supersedeas* to a writ of replevin<sup>95</sup> by which Macnemara, as attorney for Andrew Dalrymple, a merchant from Somerset County, had recovered for Dalrymple his sloop “The Nightingale” as well as fifteen hogsheads of tobacco and two casks of rum that William Stoughton, the collector at Pocomoke<sup>96</sup> had taken from him, Macnemara, “being of a Refractory and Turbulent Disposition,” and intending to prevent Hart from lawfully executing his office as chancellor, told Howard that he wished he could see the person who dared grant such a *supersedeas*. He had said this, the grand jurors charged, in a threatening manner and in the hearing not only of Michael Howard but also of several other subjects of King George.

The grand jurors charged further that at the Anne Arundel County court on 13

August 1717 Macnemara, who was an alderman and therefore a magistrate of Annapolis but who was “of a Turbulent, Babbling, Wicked and Seditious Spirit,” withdrew “the Cordial respect and due Obedience” that he ought to have had toward Hart as governor of the province and “contemning and setting at nought” Hart’s authority and in an effort to render not only Hart’s person but also his “Good Rule and Administration of the Government . . . Odious, Contemptible and Vile in the Eyes of the Good People” of the province and “to stir them up to Sedition and breach of his Lordship’s Peace and good Rule,” maliciously and falsely said, while he was “within the Attorney’s Bar” in the courthouse in Annapolis while the Anne Arundel County court was in session and in the presence of the justices and very many other people, that Hart had shaken his horse-whip at him and had laid his hand on his sword and that if anybody complained to him against Hart he as a magistrate would issue his warrant against Hart.

This threat to arrest Hart was a “great derogation of the Dignity and Authority” of the governor, a manifest contempt of the proprietor and of his commission to Hart, and an evil example to others, and in making it Macnemara had acted “against his Lordships Peace, good Rule and Government.”<sup>97</sup>

On these two indictments — the one “about the Governour” and the one “on the . . . [complaint] of John Brannock” — Macnemara at the provincial court for September of 1717 imparled until the next court,<sup>98</sup> and at the provincial courts for October of 1717<sup>99</sup> and April of 1718<sup>100</sup> the justices continued the cases again.

While these last two indictments against Macnemara were still pending, the inexorable William Bladen at the provincial court for April of 1718 sent before the grand jury three more bills of indictment against him. Two of them the grand jurors

returned *ignoramus*, and on the third one Macnemara received the king's pardon before he was tried.

The two bills that the grand jurors returned *ignoramus* were simply rehashes of those that the provincial justices quashed at their court for September of 1717. If Bladen could not get Macnemara on the first try, maybe he could on the second. He changed the date of the alleged offense in each bill, changed the date on which Macnemara was supposed to have got execution in one of the bills, and made some very minor changes in the wording of each.

In the first of these two bills Bladen alleged again that as an attorney of the Calvert County court Macnemara on 10 April 1716 — instead of 10 April 1715 — demanded from Daniel Emory two hundred pounds of tobacco for representing him in two actions — one for prosecuting an action that Emory had brought against William Vaughan in the Calvert County court and the other for defending Emory in an action that Roger Boyce had brought against Emory in the same court —, when in reality Emory had not employed him as his attorney, and that on 3 December 1716 — instead of 3 December 1715, the date in the indictment that the provincial justices had quashed — Macnemara got an execution for that amount from Young.<sup>101</sup>

In the second bill that the grand jurors returned *ignoramus* Bladen alleged again that as an attorney of the Calvert County court Macnemara on 10 April 1716 — instead of 10 April 1715 — demanded four hundred pounds of tobacco from Bryan Quinn for defending Quinn's wife Mary on a presentment of the grand jury at the Calvert County court, when in reality Quinn owed him nothing, and on 3 December 1715 got an execution for that amount from Samuel Young.<sup>102</sup> No doubt the 3 December 1715 should have been 3 December 1716, as in the other bill, since the execution could not come before the case to which it applied. Unless the clerk made

a mistake in copying the bill into the records, therefore, even on his second try Bladen could not get it right.

Bladen was not entirely unsuccessful at the provincial court for April of 1718 in his campaign against Macnemara: the grand jury did return one indictment against him. In this indictment the grand jurors charged that in Annapolis on 11 October 1716 Macnemara, “being a Person of Depraved Manners & disorderly Conversation” and “not having or in the least Regarding” “the fear of Almighty God & Reverence due to” the Lord Proprietor and his government and magistracy but endeavoring “(as much as in him lay)” to render the proprietor’s government and magistracy “odious Vile and despicable in the Eyes of the Good People” of the province and others in order to incite his Majesty’s good subjects to sedition and hatred of the proprietor’s government, while “discoursing of and Concerning” the governor and council of Maryland “in the presence & hearing of divers faithful subjects” of the king, “expressly advisedly directly scandalously Maliciously & falsly” did “say & with an Audible Voice affirm & Declare” that while the council, meaning Governor John Hart as well as the members of his council, a week earlier — on 4 October 1716 — was enquiring into Macnemara’s “Character Principles in Religion Loyalty [to] and Affection” for “the King & his most August Family,” it had acted like the Spanish Inquisition, which was “a most cruel partial tyrannical & Arbitrary Court held used & expressed within the Kingdom of Spain” and which was “most Justly abominated & abhorred by all good People” who were subjects of the English king and members of the Church of England or of other Protestant faiths.

The grand jurors charged further that on that same day and in the presence of “divers” of his Majesty’s subjects Macnemara acknowledged to Hart’s face that he had described Hart and his council that way. Such language, the grand jurors con-

cluded, was a great disparagement and derogation of the governor and his council, was against the king's peace, and was in contempt of the proprietor's good rule and dignity.<sup>103</sup>

On this indictment Macnemara imparled to the next court.<sup>104</sup> At the provincial court for July of 1718 he failed to appear,<sup>105</sup> but the justices discharged the indictment in obedience to the king's act of free grace, since Macnemara had committed the alleged offense before 1 May 1717.<sup>106</sup>

At the provincial court for July of 1718 Macnemara also failed to appear to answer the other two outstanding indictments against him, the one for allegedly taking excessive fees from John Brannock and the other for allegedly speaking seditiously against John Hart and threatening to arrest him,<sup>107</sup> but the justices also continued those cases.<sup>108</sup>

At the provincial court for July of 1718, therefore, two months after the assembly disbarred Macnemara,<sup>109</sup> the justices discharged one indictment against him and continued two more, but at this court Bladen got still another indictment against him. This would be Bladen's last gasp against Macnemara, since he died in office on 9 August 1718,<sup>110</sup> and at the provincial court for September of 1718 Thomas Bordley succeeded him as attorney general.<sup>111</sup>

This last indictment, like the two indictments from the provincial court for September of 1717 and another from the Anne Arundel County court for June of 1718,<sup>112</sup> was never tried, but still the assembly sent it to the proprietor, along with the other three indictments that had never been tried, with the act of 1719 by which it disqualified Macnemara from practicing law in the province after Baltimore and Guilford disallowed the act by which it had disbarred him thirteen months earlier.<sup>113</sup>

After a complicated action in the chancery court, on 31 May 1718 the three jus-



tices — John Hart, Samuel Young, and Philemon Lloyd — ordered Bladen to prosecute Macnemara for “his Exaction & Deceit”<sup>114</sup> in demanding more money for the king from Abraham Birkhead than the king had coming and intending to keep the difference for himself,<sup>115</sup> and at the provincial court for July of 1718 Bladen did get an indictment against Macnemara on Birkhead’s complaint. The grand jurors charged that on 20 May 1718<sup>116</sup> Macnemara, as agent for Maurice Birchfield, who as the surveyor general of customs in the Southern District of America had employed him “to Recover and Receive divers Sums of Money from divers People” in the province and particularly from Birkhead, a planter from Anne Arundel County, “Most Craftily, injuriously, deceitfully, wickedly and Extortiously . . . did Extort, require, and took and had” £86.5.0 sterling from Birkhead although Birkhead owed only £56.10.4 sterling plus interest due from 5 December 1717 until the date of payment. The twenty-eight pounds more than Birkhead owed,<sup>117</sup> the grand jurors charged, Macnemara “did then and there deceitfully Convert to his proper Use, to the great Impoverishment” of Birkhead, “to the pernicious Example of other Malefactors,” against the peace, the Crown, and the dignity of the king, and against the good rule and government of the proprietor.<sup>118</sup>

Soon after Bladen got this indictment Macnemara went to England to protest the assembly’s disbarring him,<sup>119</sup> to see the Bishop of London on behalf of Jacob Henderson, the ecclesiastical commissary of the Western Shore, and possibly to see the Spanish ambassador about getting a tract of land in the Spanish West Indies for the possible settlement of Catholics from Maryland.<sup>120</sup> The provincial justices issued a *capias ad respondendum* against him,<sup>121</sup> and when Benjamin Tasker, the sheriff of Anne Arundel County,<sup>122</sup> returned the writ to the provincial court for September of 1718 endorsed *non est inventus*, which means that he could not find Macnemara,<sup>123</sup>

the justices renewed it returnable to the next court.<sup>124</sup> On the two indictments from the provincial court for September of 1717 Macnemara also failed to appear in September of 1718, “altho Solemnly Called,” and the justices also continued those actions to the next court.<sup>125</sup> In the chancery court on 14 October 1718 Hart “observed” that Macnemara had “ffled from Justice,”<sup>126</sup> and when at the provincial court for April of 1719 he failed to appear again the justices continued all three cases once more.<sup>127</sup> Finally, at the provincial court for September of 1719, they ordered all three of the indictments struck off because Macnemara was dead.<sup>128</sup>

While all of this was going on William Bladen was also trying to prosecute Macnemara at the Anne Arundel County court. At that court for June of 1718, while three indictments against Macnemara were still outstanding in the provincial court<sup>129</sup> and a month before Bladen got the last indictment against him there, he sent before the grand jury a bill of indictment in which he charged that at South River on 26 December 1717 Macnemara assaulted Benjamin Freeman, a laborer, with swords, horse-whips, fists, and staves and “did then and there beat, wound and evilly entreat” Freeman “so that of his life it was dispaired, and other harms to him then and there did.” The grand jurors returned the bill a true bill.<sup>130</sup>

Macnemara was never prosecuted on this indictment, but in 1719 the assembly sent it to Baltimore and Guilford with the three outstanding indictments from the provincial court when it sent them the second act disabling Macnemara from practicing law in Maryland.<sup>131</sup>

While Macnemara was in England or on the sea the justices of Anne Arundel County continued to issue writs against him. After the grand jury returned the indictment in June they issued a *capias ad respondendum* against him returnable to the

August court<sup>132</sup> and bound Benjamin Freeman to appear at that court as a witness against him.<sup>133</sup> When in August Benjamin Tasker returned the *capias* endorsed *non est inventus* the justices issued an *alias capias* against Macnemara returnable to the November court.<sup>134</sup>

When Stephen Warman, the new sheriff of Anne Arundel County, returned the *alias capias* to the November court endorsed *non est inventus* also, the justices issued a *pluries capias* against Macnemara returnable to their court for March of 1718/19.<sup>135</sup> To that court Warman returned the *pluries capias* endorsed *non est inventus*, and the justices ordered the issuing of an *exigent* against Macnemara returnable to the June court.<sup>136</sup>

Warman still could not find Macnemara. To the Anne Arundel County court for June of 1719 he returned the *exigent* endorsed

By Vertue of the within Precept to me Directed I Certificate to the Justices within Menconed, that I have Caused the within named Tho<sup>s</sup> Macnemara Esq to be Enquired after, but he is not to be found within my bayliwick whereby I Can Execute the within Precept, as I am Comanded.<sup>137</sup>

In August Warman returned the *exigent* endorsed “not Executed,” and the justices renewed it returnable to the November court.<sup>138</sup> By the time that court met on 10 November 1719<sup>139</sup> Macnemara was dead; Warman returned the *exigent* against him endorsed “Mortus Est”; and the record against him ends.<sup>140</sup>

Thus for reasons that do not appear in the records four of the indictments against Macnemara were never tried. Two came from the provincial court for September of 1717, one from the Anne Arundel County court for June of 1718, and one from the provincial court for July of 1718. Macnemara appears to have been available in the province at least until the middle of July of 1718, when he failed to get

Thomas Woodfield acquitted of perjury.<sup>141</sup> Sometime after that date he went to England.<sup>142</sup> By August of 1719 he appears to have been back, but by then he might have been too sick to appear in court.<sup>143</sup> By 8 September 1719 he was dead.<sup>144</sup>

Bladen and his employers might have welcomed the delay whatever its cause. Given Bladen's lack of success in his earlier prosecutions of Macnemara, they could not have been confident about succeeding with those last four, and having them hanging over Macnemara's head was more effective harassment than prosecuting them unsuccessfully would have been.

As his alleged assaults on Matthew Beard and William Dobson and possibly those on John and Mary Navarre illustrate, Macnemara was blamed not only for his own alleged offenses but also for those of others. So when in 1718 Edward Griffith was accused of slandering John Hart, naturally it was Macnemara's fault.

At the provincial court for July of 1718, the same court at which the grand jurors indicted Macnemara for allegedly recovering more for the king from Abraham Birkhead than Birkhead owed and converting the difference to his own use, they also charged that in Annapolis on 22 June 1718 Griffith, a gentleman scrivener from Annapolis, "the fear of God before his Eyes not having but Seduced by the Instigation of the Devill maliciously devising as much as in him lay to disturb the peace and good Government [*sic*]" of the province under John Hart and to bring Hart's administration "into the hatred and detestation of the good people" of the province, "maliciously of his proper Imagination" and in the hearing of many of the king's subjects said "the false and Scandalous words" that John Hart had been "a Rogue from the Beginning."

Further, the grand jurors charged, at Joseph Hill's plantation in Anne Arundel

County on 29 June 1718 and again in the presence of many people, Griffith, “persisting in his Malice and Calumniation” of John Hart, “of his proper Imagination . . . deliberately and advisedly” said that “By God” if ever there came a change of government in England, “Depend upon it,” John Hart would be “turn’d out.” Baltimore would remember Hart’s behavior and how he “threatned his Lordship . . . into Several acts . . .” Such language, the grand jurors charged, was in great derogation of the proprietor, a scandal to John Hart, against the peace of the king, an evil example to “very many others Offenders in the like nature,” and contrary to the proprietor’s good rule and government.

After Griffith pleaded guilty and submitted himself to the mercy of the court the justices continued the case until the twenty-fourth. Later Griffith produced in court a petition to Hart and Hart’s response.

Griffith told Hart that he had been indicted “for scandalous and Opprobrious words Spoken” about Hart and that “proof being made already” he thought it “not Proper or adviseable to make any defence but submitted” himself to the justices to pass whatever judgment they considered appropriate “for so hainous [*sic*] a Crime.” He hoped that out of his accustomed clemency and goodness Hart would forgive and pardon him for “his unhandsome and disrespectfull and Indecent behaviour,” and he concluded with a “hearty promise and firm Resolution never to Offend” Hart again.

In his endorsement on Griffith’s petition Hart assured Griffith that if he would publicly acknowledge in court “his Folly in endeavouring to Scandalize” Hart’s good name he would heartily forgive him.<sup>145</sup>

Griffith blamed Macnemara for the slander. In open court he acknowledged that he had spoken “very Scandalous and opprobrious and false words” about Hart but that “he was induced So to do by Conversing with” Thomas Macnemara, who,

he believed, was an ill-wisher to Hart and to the government under Hart's administration. With that the justices decided that Griffith should be prosecuted no further on the indictment and should be discharged from his recognizance.<sup>146</sup>

Thus twice in eight days, allegedly, the sinister Thomas Macnemara lured the naive and unsuspecting Edward Griffith into speaking contemptuously of John Hart. To Macnemara's enemies anything was possible. Whether Griffith's accusation of Macnemara was a condition of Hart's clemency does not appear: evidence of such machinations is not the sort that survives.

Not including the indictment on which Macnemara received the king's pardon before he was tried or the one action on a *scire facias* that was struck off,<sup>147</sup> William Bladen's total failures in fourteen of his sixteen criminal prosecutions against Thomas Macnemara — three bills of indictment returned *ignoramus*, one indictment struck off, two indictments quashed, verdicts of not guilty on three indictments and in one action on a *scire facias*, and four indictments never tried — make it appear that Bladen might have been more interested in harassing Macnemara than in achieving justice and that in most if not all of these cases he had no business bringing the charges to begin with. Only in the prosecution of Macnemara for his alleged assault on and attempted buggery of Benjamin Allen did Bladen have any success, and there only a partial one, since Macnemara pleaded guilty only to the alleged assault and the provincial justices dismissed the alleged attempted buggery.

Probably Bladen's prosecution of Macnemara and John Mitchell for their alleged murder of Thomas Graham should be considered a fifteenth failure. The best that Bladen could get from the petit jury in that case was a verdict of chance-medley, and after the provincial justices finally and illegally raised the crime to manslaughter

the Committee for Hearing Appeals from the Plantations overturned that illegal move.<sup>148</sup>

Since in all of these prosecutions as well as on the other occasions in which he had to find bail Macnemara appears to have had no trouble finding sureties to keep him out of jail, except when he was charged with the murder of Thomas Graham and therefore was not eligible for bail, he must have had the support of a variety of men who were wealthy enough to risk the loss of their bonds but who trusted him enough that they were willing to take the chance. That, together with the support of enough of the delegates to make him their clerk for just over two years, the respect of enough of the voters and prominent men of Annapolis to make him a common-councilman, alderman, mayor, and then alderman again, the sufficient favor of Baltimore and Guilford to make him naval officer of Patuxent, and the sufficient trust of Jacob Henderson, the ecclesiastical commissary of the Western Shore, to make him his proctor or procurator of office, and all of this added to Macnemara's courage and his competence as an attorney, made him dangerous to the powerful in the province. Unable to rid themselves of him in any other way, they would have to disbar him and hope for the best.

*William Bladen's Criminal Prosecutions of Thomas Macnemara*

*1710-1719*

	Year	Alleged Crime	Outcome	Source
1.	1710	Murder	Jury — guilty of chance-medley only	PC, Liber P. L., No. 3, pp. 231-234, 398-400.
2.	1711	Assault and attempted buggery	Quashed	PC, Liber T. P., No. 2, pp. 586-587.
3.	1712	Assault and attempted buggery	Pleads guilty to assault; attempted buggery dismissed	PC, Liber T. P., No. 2, pp. 587-588.
4.	1712	Excessive fees	Ignoramus	PC, Liber T. P., No. 2, p. 584.
5.	1715	Assault	Not guilty	PC, Liber V. D., No. 2, pp. 4-6.
6.	1715	Assault	Struck off	PC, Liber V. D., No. 2, p. 1.
7.	1717	Excessive fees	Not guilty	PC, Liber V. D., No. 3, pp. 193-194.
8.	1717	Excessive fees	Not guilty	PC, Liber V. D., No. 3, pp. 194-195.
9.	1717	Excessive fees	Quashed	PC, Liber V. D., No. 3, pp. 195-196.
10.	1717	Collecting fees from man who had never hired him as an attorney	Quashed	PC, Liber V. D., No. 3, pp. 196-197.



	Year	Alleged Crime	Outcome	Source
11.	1717	Seditious speech	Not tried	<i>Md. Arch.</i> , XXXVI, 530-532.
12.	1717	Excessive fees	Not tried	<i>Md. Arch.</i> , XXXVI, 533-534.
13.	1718	Excessive fees	Ignoramus	PC, Liber V. D., No. 3, pp. 260-261.
14.	1718	Collecting fees from man who had never hired him as an attorney	Ignoramus	PC, Liber V. D., No. 3, pp. 261-262.
15.	1718	Seditious speech	Pardon before trial	PC, Liber P. L., No. 4, pp. 83-84.
16.	1718	Collecting excessive amount for king and converting excess to own use	Not tried	<i>Md. Arch.</i> , XXXVI, 532-533.
17.	1718	Assault	Not tried	<i>Md. Arch.</i> , XXXVI, 534.

Those indictments that were not tried were still hanging over Thomas Macnemara when he died in 1719.

*Chapter 9*  
*Harassment by Indictment, 1712-1719*

<sup>1</sup> See Text below at Notes 65-68.

<sup>2</sup> Donnell M. Owings, *His Lordship's Patronage: Office of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), pp. 133-134.

<sup>3</sup> Provincial Court Judgment Record, Liber V. D., No. 3, pp. 111, 112.

<sup>4</sup> Charles County Court Record, Liber D. No. 2, pp. 7, 72-73; Provincial Court Judgment Record, Liber I. O., No. 1, pp. 524-530; Chapter 2, "Competence," at Notes 103-114.

<sup>5</sup> See Chapter 5, "Railroading, 1710-1713," at Notes 99-103.

<sup>6</sup> One for an alleged assault on Mary Navarre and two for allegedly taking excessive fees as an attorney. Since later in this chapter I deal fully with these cases and those that follow, I will give the citations then.

<sup>7</sup> For an alleged assault on John Navarre.

<sup>8</sup> One for allegedly taking excessive fees and the other for allegedly collecting fees from a man who had not employed him as an attorney in the cases at issue.

<sup>9</sup> For allegedly comparing Governor John Hart and his council to the Spanish Inquisition.

<sup>10</sup> One for allegedly taking excessive fees, one for allegedly recovering more for the king than the planter owed and converting the difference to his own use, one

for allegedly speaking seditiously against Hart and threatening to arrest him, and one for an alleged assault.

<sup>11</sup> For the proceedings in the death of Thomas Graham and the indictments for Macnemara's allegedly assaulting and attempting to bugger Benjamin Allen, see Chapter 5, "Railroading, 1710-1713."

<sup>12</sup> *Archives of Maryland*, hereafter *Md. Arch.*, (72 vols.; Baltimore: Maryland Historical Society, 1882-1973), XXX, 26; XXXIII, 11, 12; Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), p. 214.

<sup>13</sup> Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 42, 43, 46, 47, 49, 50, 160-161.

<sup>14</sup> John Seymour to Council of Trade and Plantations, 10 March 1708/9, "Unpublished Provincial Records," *Maryland Historical Magazine*, XVII, No. 2 (June 1922), p. 219; *ibid.*, No. 3 (September 1922), p. 287.

<sup>15</sup> Provincial Court Judgment Record, Liber T. P., No. 2, p. 584. For the two actions of Edward Sommersett against John Brannock, see *ibid.*, Liber T. B., No. 2, pp. 371-374, 374-378. Macnemara is not mentioned in the write-up of the second case, but he is mentioned earlier as the attorney in both cases. *Ibid.*, p. 94.

<sup>16</sup> The most likely reason for Macnemara's defaulting in this case appears to be that he had gone to England to protest the assembly's disbaring him, to carry the complaint of Jacob Henderson, the ecclesiastical commissary of the Western Shore, to the Bishop of London, and possibly to see the Spanish ambassador about a grant of land in the Spanish West Indies for the possible settlement of Catholics from

Maryland if Hart remained governor but had not hired a lawyer to represent him while he was gone. See Note 143 below.

<sup>17</sup> Provincial Court Judgment Record, Liber V. D., No. 1, p. 95; Liber P. L., No. 4, pp. 207-214. The clerk did not enter the amount of the costs in the case.

In May of 1718, the same session at which it disbarred Macnemara (1718, c. 16, *Md. Arch.*, XXXVI, 525-527), the assembly passed an act limiting the continuance of actions (1718, c. 10, *Md. Arch.*, XXXVI, 524-525), but obviously that was too late to help Macnemara.

<sup>18</sup> Anthony Ivy was one of the members of the grand jury at this court. Provincial Court Judgment Record, Liber V. D., No. 1, p. 41.

<sup>19</sup> *Ibid.*, pp. 129-130.

<sup>20</sup> *Ibid.*, p. 372. The record states only that Macnemara “appeares to his recog this Court.”

<sup>21</sup> *Ibid.*, p. 360.

<sup>22</sup> For Bladen’s lesson on the use of the *scire facias* to recover a bond, see Chapter 4, “Not-So-Loving Spouses, 1707-1708,” at Notes 47-51.

<sup>23</sup> Macnemara allegedly committed the assault on the Monday “next after the feast of Pentecost Commonly Call’d Whitsunmunday.” Whitsunday is the seventh Sunday after Easter, and therefore Whitsun-Monday is the eighth Monday after Easter.

<sup>24</sup> This wording was conventional in the indictment for assault and therefore provides no information about the seriousness of the assault. See Chapter 3, “Early Troubles, 1703-1710,” Note 3.

<sup>25</sup> This is more conventional wording in indictments for assault, and therefore the damage to Dobson, if there was any at all, probably was not as serious as the

record makes it sound. *Ibid.*

<sup>26</sup> Provincial Court Judgment Record, Liber V. D., No. 1, pp. 509, 565, 732-736. The record lists only eleven petit jurors, but probably this is an oversight of the clerk.

Bladen asked the court to proceed on the *scire facias* even though the king had returned the province to Baltimore, and the justices obliged. The *scire facias* was issued in the name of the king, and prosecuting Macnemara under it would make it unnecessary for Bladen to sue out a new one in the name of the proprietor.

William Dobson was never prosecuted either in the provincial court or in the Anne Arundel County court for his apparent attack on James Horsley. Later Dobson did not prosper. From the records of the Anne Arundel County court for June of 1719:

The Petition of Wm Dobson of the City of Annapolis  
Carpenter to the Justices of this Court, he Most humbly  
intreats their Worships for his Better subsistance [*sic*] to order  
him some allowance out of the County Levy  
Which Petition being Read and heard  
is Rejected.

Anne Arundel County Court Judgment Record, Liber R. C., p. 372. In November of 1721 the Anne Arundel County court allowed John Slatter £1.7.6 “for his Expenses in Burying W<sup>m</sup> Dobson a poor Man.” *Ibid.*, 1720-1721, p. 514.

<sup>27</sup> For Macnemara’s acquittal of his alleged assault on Matthew Beard, see Provincial Court Judgment Record, Liber T. L., No. 3, pp. 266, 268-270, and Chapter 3, “Early Troubles, 1703-1710,” at Notes 2-8.

<sup>28</sup> The Baltimore County Court opened on 1 March 1714/15. Thus the split date.

<sup>29</sup> Baltimore County Court Proceedings, Liber I. S., No. A, p. 604.

<sup>30</sup> 1704, c. 47, *Md. Arch.*, XXVI, 322. In 1715 the assembly reduced the fine to £0.2.6 current money for the first “oath or Curse” and but retained the fine of five shillings “for Every Oath or Curse after the first.” 1715, c. 34, *Md. Arch.*, XXX, 244-245. The assembly continued these penalties by 1723, c. 16, *Md. Arch.*, XXXIV, 734.

<sup>31</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 3, p. 429. It might be stretching a point to suggest that Macnemara’s absence from the Anne Arundel County court for March of 1714/15 might have resulted from his already feeling ill. Two weeks later he asked the justices of the Prince George’s County court to continue all of his cases to the next court because he had such a violent cold that he was entirely incapable of managing any trials for his several clients. He believed that there was no urgent reason to bring the actions to trial anyway, since there was “little or noe Tobacco in the County.” The justices granted his petition. Prince George’s County Court Record, Liber G, p. 720.

<sup>32</sup> James Maxwell’s status is not indicated in this entry, but he might already have become chief justice of Baltimore County. Baltimore County Court Proceedings, Liber I. S., No. A, pp. 1, 60; Chapter 2, “Competence,” Note 201.

<sup>33</sup> Provincial Court Judgment Record, Liber V. D., No. 1, p. 515. Macnemara had entered the bond before Benjamin Tasker, one of the non-quorum justices of Anne Arundel County. Anne Arundel County Court Judgment Record, Liber T. B., No. 3, pp. 313-315, 360-362; Liber V. D., No. 1, pp. 185-188.

<sup>34</sup> Provincial Court Judgment Record, Liber V. D., No. 1, p. 515. Horsley also entered his bond before Benjamin Tasker.

<sup>35</sup> *Ibid.*, p. 486; Liber V. D., No. 2, pp. 4-6.

<sup>36</sup> St. Anne’s Parish included Annapolis. *Md. Arch.*, XXXIII, 418.

<sup>37</sup> Provincial Court Judgment Record, Liber V. D., No. 1, p. 486; Liber V. D., No. 2, pp. 6-7. The witnesses to both indictments were John Navarre, Mary Navarre, Richard Rotherfoot, Winerford Clarke, and Mary Harris.

<sup>38</sup> *Ibid.*, Liber V. D., No. 1, p. 486; Liber V. D., No. 2, p. 1.

<sup>39</sup> John Beale was the clerk of the secretary's office and of the provincial court as well as the clerk of Anne Arundel County. Owings, *His Lordship's Patronage*, pp. 140, 148.

<sup>40</sup> Provincial Court Judgment Record, Liber V. D., No. 1, p. 518.

<sup>41</sup> *Ibid.*, pp. 581, 582; Liber V. D., No. 2, pp. 4-6, 6-7.

<sup>42</sup> Before Horsley pleaded not guilty William Bladen reminded the justices that since the finding of the indictments against Horsley and Macnemara the king had restored the province to Charles Lord Baltimore and requested that the court prosecute the indictments, just as he did in the case of the *scire facias* on Macnemara's alleged assault on William Dobson. The indictments, like the *scire facias*, were drawn in the name of the king. Again the justices agreed.

<sup>43</sup> Provincial Court Judgment Record, Liber V. D., No. 2, pp. 6-7.

<sup>44</sup> *Ibid.*, pp. 4-6. The man who served on both of Macnemara's juries at this court was Phillip Dowell.

<sup>45</sup> Provincial Court Judgment Record, Liber V. D., No. 1, p. 486; Liber V. D., No. 2, p. 1. We know that the indictment that the justices struck off at the provincial court for May of 1716 is the indictment that the grand jurors returned at the provincial court for April of 1715 because the grand jury had returned it "some Courts past" and since it was the only remaining indictment against Macnemara.

John Navarre's character might be revealed by his refusal to free William Barnes from his service at the end of his term or to return Barnes' indenture to him

so that Barnes could prove that his term had ended. On 15 July 1719 Barnes petitioned the provincial court, and the justices ordered Navarre to free him, to give him his freedom dues, and to pay all of the costs of the petition. Provincial Court Judgment Record, Liber P. L., No. 4, p. 2.

The freedom dues for man at this time was one new hat, a good suit, which included a coat and britches of either kersey or broadcloth, one new shift of white linen, one new pair of french fall shoes and stockings, two hoes, one axe, and one gun valued at twenty shillings and not more than “four foot by the barrel” or less than three-and-a-half feet. 1715, c. 44, *Md. Arch.*, XXX, 286. Kersey is “a course ribbed woolen cloth” or “a heavy wool or wool and cotton fabric made in plain or twill weave with a smooth surface.” *Webster’s Third New International Dictionary of the English Language Unabridged* (1981).

<sup>46</sup> For John Navarre as an innholder from Annapolis, see Provincial Court Judgment Record, Liber V. D., No. 2, pp. 46-50; Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 647; Liber T. B., No. 2, pp. 5, 377; Liber T. B., No. 3, pp. 104, 158a, 407; Liber V. D., No. 1, pp. 138-141, 191, 412; Liber R. C., p. 204.

<sup>47</sup> Richard Rotherfoot would be one of the witnesses to the indictments against Macnemara and Horsley.

<sup>48</sup> The witnesses to both indictments against the Navarres were Horsley, Rotherfoot, and Macnemara. At the Anne Arundel County court for November of 1714 the grand jurors also returned *ignoramus* a bill of indictment in which William Bladen charged that in St. Anne’s Parish on 21 October 1714 John and Mary Navarre assaulted James Horsley. Horsley was the only witness to this bill. Anne Arundel County Court Judgment Record, Liber T. B., No. 3, pp. 411-412.



<sup>49</sup> The two writs of *certiorari* are dated 25 September 1714, before the alleged assaults had occurred, but a writ that was sued out between sessions of a court was dated the last day of the previous session of the court out of which it was sued. C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), p. 503.

<sup>50</sup> 5-6 William & Mary, c. 11, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), IX, 276-279; 8-9 William III, in *ibid.*, X, 112-113.

<sup>51</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 3, pp. 402, 437-439, 439-440; Provincial Court Judgment Record, Liber V. D., No. 1, pp. 515, 515-516, 516; Liber V. D., No. 2, pp. 46-50, 50-56. With what John and Mary Navarre were supposed to have assaulted Richard Rotherfoot and James Horsley does not appear in the record either of the Anne Arundel County court or of the provincial court.

Wornell Hunt, not only a prominent attorney but also the original recorder of Annapolis (Second Charter of Annapolis, Chancery Record 2, pp. 590, 596, 597; Elihu S. Riley, "*The Ancient City.*" *A History of Annapolis, in Maryland, 1649-1887* (Annapolis: Record Printing Office, 1887), pp. 86, 88), might himself have been involved in one of these brawls. At the provincial court for April of 1715, the same court at which the grand jury indicted Macnemara and Horsley for assaulting Mary Navarre and Macnemara for assaulting John Navarre, Hunt appeared under bond of one hundred pounds sterling, which he had given before John Beale, one of the aldermen of Annapolis, to guarantee that he would appear at that court and would keep the peace in the meantime. Macnemara was his surety of fifty pounds sterling. When Hunt appeared, the justices discharged him from his bond. Provincial Court

Judgment Record, Liber V. D., No. 1, p. 515.

At that same court Michael Hunt also appeared under bond of one hundred pounds sterling, with John Navarre as his surety of fifty pounds, that he had given before William Bladen to guarantee that he would appear at that court and not depart the court without its permission. That bond also the justices discharged on Michael Hunt's appearance. *Ibid.* The record of Michael Hunt's bond does not mention his good behavior in the meantime.

Wornell Hunt's and Michael Hunt's having to give bond for their appearances and their good behavior might make it appear more likely that they were involved in the brawl than that they were trying to keep the peace, while their having no further proceedings against them might make it appear that they were able to convince the justices that they had been trying to keep the peace. Michael Hunt was not Wornell Hunt's son. *Biographical Dictionary*, I, 472-473.

<sup>52</sup> Provincial Court Judgment Record, Liber V. D., No. 2, p. 63. Later Macnemara did appear at the provincial court for July of 1710. *Ibid.*, pp. 71-74, 74-78, 81-87.

<sup>53</sup> For the day of the closing of the session of the provincial court, see Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 199-200.

<sup>54</sup> *Md. Arch.*, XXX, 372-374, 409-410, 516-517; 1718, c. 16, *Md. Arch.*, XXXVI, 526; 1719, c. 17, *Md. Arch.*, XXXVI, 529.

<sup>55</sup> *Md. Arch.*, XXX, 606.

<sup>56</sup> Provincial Court Judgment Record, Liber V. D., No. 2, p. 144. I have found no evidence of this *scire facias* in the records of the provincial court for July of 1716 (*ibid.*, pp. 63ff.), and therefore Bladen must have brought it in September of 1716.

<sup>57</sup> Provincial Court Judgment Record, Liber P. L., No. 4, pp. 83-84. See also

Text below at Note 103.

<sup>58</sup> See Chapter 7, “Respectability, 1713-1719,” at Notes 37-40, and Chapter 10, “John Hart’s Vendetta, 1716-1719,” at Notes 6-8.

<sup>59</sup> Chancery Record 3, p. 401.

<sup>60</sup> For the ambiguity about when Macnemara returned from England this time, see Chapter 1, “Character,” Note 58.

<sup>61</sup> Provincial Court Judgment Record, Liber V. D., No. 2, p. 390. Since Macnemara was surety on two bonds to guarantee William FitzRedmond’s appearance at the provincial court for September of 1716 (*ibid.*, pp. 158-159, 359), and since at that court the grand jury did return two indictments against FitzRedmond (*ibid.*, p. 127), this *scire facias* might have been for the forfeiture of one of these sureties. Thus we cannot be sure that this *scire facias* involved any alleged criminal action Macnemara’s part.

At the provincial court for April of 1717, when the action on the *scire facias* against Macnemara was struck off (*ibid.*, p. 390), the two indictments against FitzRedmond were also struck off. *Ibid.*, Liber V. D., No. 3, p. 82.

FitzRedmond’s other sureties were Daniel of St. Thomas Jenifer and James Carroll. In the index to the Provincial Court Judgment Record at the State Archives in Annapolis I have found no entry for any action for the recovery of their bonds through April of 1719. Provincial Court Judgment Record, Index for Liber P. L., No. 4.

Apparently FitzRedmond did not appear at the provincial court for September of 1716. Thomas Reynolds, the sheriff of Anne Arundel County, returned *nihil* a writ of *scire facias* for the forfeiture of the bond of one hundred pounds sterling that he had given at the special court of oyer and terminer in Annapolis on 10 July 1716.

Provincial Court Judgment Record, Liber V. D., No. 2, pp. 158-159.

*Nihil* means that the sheriff could not serve the writ. Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 1045.

I have found no further reference to this writ of *scire facias* against FitzRedmond, though this action might be one of those that the provincial justices struck off later in the session. Provincial Court Judgment Record, Liber V. D., No. 2, p. 359.

<sup>62</sup> Macnemara wrote a letter to Guilford on each of these dates, and Guilford's response is dated 16 November 1717. *Md. Arch.*, XXXIII, 130. Macnemara's letters appear not to have survived.

<sup>63</sup> *Ibid.*

<sup>64</sup> Baltimore County Court Proceedings, Liber G. M., pp. 125, 179. For Bernard White as clerk of indictments in November of 1717, see *ibid.*, p. 205. For 6 August 1717 as the date the court opened, see *ibid.*, p. 122.

Patrick Murphy himself was not known for his refinement. At the Baltimore County court for November of 1713 he was put in the stocks for half an hour for "being refractory & troublesome for his Abuse & Affronts offerd [*sic*] to . . . [the] Court" (*ibid.*, Liber I. S., No. A, p. 443), and at the Baltimore County court for August of 1714 the justices fined him ten shillings or 120 pounds of tobacco for "prophanely cursin[g] in Open Court." *Ibid.*, p. 539.

<sup>65</sup> Since the Anne Arundel County court for August of 1717 met on 13 August (Anne Arundel County Court Judgment Record, Liber R. C., p. 30), if Macnemara called Bladen a "Blockhead booby" on 15 August 1717, he said it during the excitement of court days.

<sup>66</sup> Owings, *His Lordship's Patronage*, pp. 140, 142, 144.

<sup>67</sup> Anne Arundel County Court Judgment Record, Liber R. C., pp. 31-32.

<sup>68</sup> *Ibid.*, p. 95.

<sup>69</sup> *Md. Arch.*, XXXIII, 138, 170, 216-217; Owings, *His Lordship's Patronage*, p. 159.

<sup>70</sup> The Anne Arundel County court met on 13 August 1717, while the provincial court met on 10 September 1717. Anne Arundel County Court Judgment Record, Liber R. C., p. 30; Provincial Court Judgment Record, Liber V. D., No. 3, p. 106.

<sup>71</sup> Provincial Court Judgment Record, Liber V. D., No. 3, p. 106.

<sup>72</sup> 1719, c. 17, *Md. Arch.*, XXXVI, 528-530. The four indictments not tried are written out following this act. See *Md. Arch.*, XXXVI, 530-532, 533-534, for the two earlier indictments, and *ibid.*, pp. 532-533, 534, for the two later ones.

<sup>73</sup> Provincial Court Judgment Record, Liber V. D., No. 3, pp. 191-192.

<sup>74</sup> *Ibid.*, p. 111.

<sup>75</sup> 1708, c. 8, *Md. Arch.*, XXVII, 360.

<sup>76</sup> Provincial Court Judgment Record, Liber V. D., No. 3, pp. 193-194. Since the records of Calvert County do not survive, it is not possible to know the details of this case or of the following cases in which Macnemara was alleged to have taken excessive fees.

<sup>77</sup> *Ibid.*, pp. 194-195. In this case Macnemara at the provincial court for September of 1717 agreed ("Enters into rule") that John Eastwood's deposition, which he had given before John Smith, one of the justices of Calvert County, would be allowed as evidence as good for the proprietor against him as if Eastwood had delivered his evidence to the petit jury "Viva Voca." *Ibid.*, p. 111.

<sup>78</sup> 1708, c. 8, *Md. Arch.*, XXVII, 360-362.

<sup>79</sup> Prince George's County Court Record, Liber G, p. 24a.

<sup>80</sup> Provincial Court Judgment Record, Liber V. D., No. 3, pp. 195-196.

<sup>81</sup> *Ibid.*, pp. 260-261.

<sup>82</sup> *Ibid.*, pp. 196-197.

<sup>83</sup> *Ibid.*, pp. 261-262.

<sup>84</sup> A penal bond was a bond that mentioned two amounts: the principal sum — the amount of the debt — and the penal sum — the amount that the debtor agreed to pay his creditor if he did not pay the principal amount by the date on which it was due and that was often twice the amount of the principal sum. Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4 vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), III, 434-435; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 337.

<sup>85</sup> Blackstone, *Commentaries*, III, 397; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 229.

<sup>86</sup> Blackstone, *Commentaries*, III, 397; *Black's Law Dictionary* (6th edition), p. 1058; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 414.

<sup>87</sup> Blackstone, *Commentaries*, III, 296, 397; *Black's Law Dictionary* (6th edition), p. 1045; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 415.

<sup>88</sup> Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 413-418.

<sup>89</sup> Since these indictments were never prosecuted, they are not written out in the Provincial Court Judgment Record, but after its session of May and June of 1719

the assembly sent them to the proprietor, along with two other indictments on which Macnemara had never been tried, with the second act that it passed to disqualify him from practicing law in the province, and therefore they appear in the records of the assembly. The act is 1719, c. 17, *Md. Arch.*, XXXVI, 528-530, and the two indictments are printed in *Md. Arch.*, XXXVI, 530-532, 533-534. See also Chapter 11, "Disbarred Again, 1718," at Notes 15-16.

Ordinarily indictments were written out only in the records of the court at which they were disposed of.

<sup>90</sup> See Text above at Notes 12-17.

<sup>91</sup> A *supersedeas* is a writ that nullifies the writ against which it is directed. Blackstone, *Commentaries*, I, 353; *Black's Law Dictionary* (6th edition), pp. 1437-1438; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 254, 263.

<sup>92</sup> The writ of *audita querela* was used when it was necessary to vacate a judgment because of circumstances that arose after a court awarded judgment. Blackstone, *Commentaries*, III, 405-406; C. Ashley Ellefson, "The Writ of Audita Querela in Eighteenth-Century Maryland," *Maryland Historical Magazine*, LIX, No. 4 (December 1964), pp. 369-379; C. Ashley Ellefson, *A Book of Writs and Precepts*, Typescript deposited at the Maryland State Archives in Annapolis, alphabetized.

<sup>93</sup> At the provincial court for April of 1709 Edward Newton produced an *audita querela* against Thomas Macnemara, but the record states only that there were no further proceedings on it. Provincial Court Judgment Record, Liber P. L., No. 2, p. 579. Newton brought an action against Macnemara on an *audita querela* again at the next court. In July of 1709 Macnemara did not appear to answer the action, and the justices renewed the *audita querela* returnable to the next court. *Ibid.*, p. 587. To the

provincial court for October of 1709 John Gresham Jr., the sheriff of Anne Arundel County, returned the writ endorsed *nihil*. *Ibid.*, Liber P. L., No. 3, p. 12.

In the index to the Provincial Court Judgment Record at the State Archives in Annapolis I have found no further reference to this action.

<sup>94</sup> *Md Arch.*, XXXVI, 533-534. We know that this is one of the six indictments that the grand jurors returned at the provincial court for September of 1717 because Samuel Chambers was the foreman of the grand jury that returned it, and he was not the foreman of the grand jury at the provincial court again until April of 1719, when the grand jury returned no indictments against Macnemara. *Md. Arch.*, XXXVI, 533-534; Provincial Court Judgment Record, Liber V. D., No. 3, pp. 106, 220ff., 234; Liber P. L., No. 4, pp. 2, 93, 242.

I have not checked to find the judgment against Ed Brannock.

<sup>95</sup> The writ of replevin is a writ by which a person recovers goods that another person has seized illegally. Blackstone, *Commentaries*, III, 145-151; *Black's Law Dictionary* (6th edition), p. 1299; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 182-183; Ellefson, *A Book of Writs and Precepts*, alphabetized.

<sup>96</sup> Owings, *His Lordship's Patronage*, p. 182.

<sup>97</sup> *Md. Arch.*, XXXVI, 530-532. Again we know that this indictment came from the provincial court for September of 1717 because Samuel Chambers was the foreman of the grand jury that returned it. *Md. Arch.*, XXXVI, 530-532; Provincial Court Judgment Record, Liber V. D., No. 3, p. 106. See also Note 89 above.

<sup>98</sup> Provincial Court Judgment Record, Liber V. D., No. 3, p. 192.

<sup>99</sup> *Ibid.*, p. 225.

<sup>100</sup> *Ibid.*, p. 244.



<sup>101</sup> *Ibid.*, pp. 234, 261-262. The witnesses to this bill of indictment were John Brome, the execution, and Daniel Emory's oath, just as on the indictment that the provincial justices quashed. *Ibid.*, pp. 196-197.

<sup>102</sup> *Ibid.*, pp. 234, 260-261. The witnesses are not listed at the end of this bill of indictment.

<sup>103</sup> *Ibid.*, p. 234; Liber P. L., No. 4, pp. 83-84. The record of the council's inquiry into Macnemara's "Character Principles in Religion [and] Loyalty and Affection" for the king and his family has not survived. William Bladen was clerk of the council at the time, since John Beard was not commissioned until 12 October 1716. *Md. Arch.*, XXV, 343; Owings, *His Lordship's Patronage*, p. 136.

<sup>104</sup> Provincial Court Judgment Record, Liber V. D., No. 3, p. 262.

<sup>105</sup> "Thomas Macnemara altho solemnly called Comes not."

<sup>106</sup> Provincial Court Judgment Record, Liber P. L., No. 4, pp. 83-84. The General Pardon of 1717 is 3 George I, c. 19, with only the title printed in Pickering, *The Statutes at Large*, XIII, 556. It is printed in full in the laws of 3 George I (London: John Baskett, 1717), pp. 499-512. The date specified in the act is not 1 May 1717 but rather the sixth (*ibid.*, p. 500), a date that the king and the parliament apparently chose arbitrarily.

<sup>107</sup> Provincial Court Judgment Record, Liber P. L., No. 4, p. 27. The entry reads simply "In these two Accons The Defend! altho Solemnly Called Comes not."

<sup>108</sup> Since the justices continued these cases again in September of 1718 (*Ibid.*, p. 232), they must have continued them in July.

<sup>109</sup> *Md. Arch.*, XXXIII, 197, 184; 1718, c. 16, *Md. Arch.*, XXXVI, 525-527; Chapter 11, "Disbarred Again, 1718."

<sup>110</sup> Following the Parish Register, St. Anne's Parish, Annapolis, 1708-1785, p.

39, Christopher Johnston says that Bladen was *buried* in Annapolis on 9 August 1718 (Christopher Johnston, "Bladen Family," *Maryland Historical Magazine*, V, No. 3 (September 1910), p. 298; *ibid.*, VIII, No. 3 (September 1913), p. 303), but Bladen's tomb on Church Circle in Annapolis has 9 August 1718 as the date of his death rather than of his burial.

<sup>111</sup> Provincial Court Judgment Record, Liber P. L., No. 4, p. 91; Owings, *His Lordship's Patronage*, p. 134.

<sup>112</sup> Discussion of this indictment appears below at Notes 129-131.

<sup>113</sup> 1718, c. 16, *Md. Arch.* XXXVI, 525-527; 1719, c. 17, *Md. Arch.*, XXXVI, 528-530; *Md. Arch.*, XXXVI, 532-533; Chapter 13, "Disbarred Once More, 1719."

<sup>114</sup> Calvert Papers, No. 260, p. 12, Maryland Historical Society, Baltimore.

<sup>115</sup> Chancery Record 3, p. 397; Calvert Papers, No. 12.

<sup>116</sup> Where Bladen got the 20 May 1718 does not appear, but the chancery court did meet that day. Chancery Record 3, p. 409ff.

<sup>117</sup> These figures do not add up, apparently because they do not include the interest and the charges of the suit in chancery.

<sup>118</sup> *Md. Arch.*, XXXVI, 532-533. This indictment was never written out in the Provincial Court Judgment Record. We know that it is the indictment that the grand jury returned at the provincial court for July of 1718 because James Monat was the foreman of the grand jury that returned it. *Md. Arch.*, XXXVI, 532-533; Provincial Court Judgment Record, Liber P. L., No. 4, p. 2. The return of the indictment is noted in Provincial Court Judgment Record, Liber P. L., No. 4, p. 3, when James Monat was the foreman of the grand jury. *Ibid.*, p. 2. In the *Archives* James Monat is called W. Wovat.

<sup>119</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 525-527; Chapter 11, "Disbarred Again,

1718.”

<sup>120</sup> See Chapter 7, “Respectability, 1713-1719,” Note 86.

<sup>121</sup> Provincial Court Judgment Record, Liber P. L., No. 4, p. 232.

<sup>122</sup> *Ibid.*, p. 91; Anne Arundel County Court Judgment Record, Liber R. C., p. 231. By November of 1718 Stephen Warman was sheriff of Anne Arundel County. *Ibid.*, p. 252.

<sup>123</sup> Blackstone, *Commentaries*, III, 283; *Black’s Law Dictionary* (6th edition), p. 1053; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 183.

<sup>124</sup> Provincial Court Judgment Record, Liber P. L., No. 4, p. 232.

<sup>125</sup> *Ibid.*

<sup>126</sup> Chancery Record 3, p. 416.

<sup>127</sup> Provincial Court Judgment Record, Liber P. L., No. 4, p. 405, and Index.

<sup>128</sup> *Ibid.*, Liber W. G., No. 1, p. 31.

<sup>129</sup> These were the two indictments from the provincial court for September of 1717 that would never be tried — one for taking excessive fees from John Brannock and the other for speaking seditiously against John Hart and threatening to arrest him — and the indictment from the provincial court for April of 1718 that the justices would discharge because of the king’s pardon — for comparing Hart and his council to the Spanish Inquisition.

<sup>130</sup> *Md. Arch.*, XXXVI, 534; Anne Arundel County Court Judgment Record, Liber R. C., p. 201. We know that the grand jury returned this indictment at the Anne Arundel County court for June of 1718 because the return of the indictment is noted in Anne Arundel County Court Judgment Record for that session and Francis Hardisty was the foreman of the grand jury that returned it. *Md. Arch.*, XXXVI, 534;

Anne Arundel County Court Judgment Record, Liber R. C., p. 201.

Here again is the conventional wording of the indictment for assault, which must often make the assault, even when it did actually occur, sound a lot more serious than it was. See again Chapter 3, "Early Troubles, 1703-1710," Note 3.

<sup>131</sup> *Md. Arch.*, XXXVI, 534.

<sup>132</sup> Anne Arundel County Court Judgment Record, Liber R. C., p. 211.

<sup>133</sup> *Ibid.*, pp. 201, 207.

<sup>134</sup> *Ibid.*, p. 239. The *alias* was issued when an earlier writ of the same kind had been issued in the same case. Blackstone, *Commentaries*, IV, 319; John Bouvier, *Law Dictionary and Concise Encyclopedia* (8th edition; 2 vols.; Kansas City, Mo.: Vernon Law Book Co., 1914), I, 171.

<sup>135</sup> Anne Arundel County Court Judgment Record, Liber R. C. p. 267. The *pluries capias* was a writ issued after two writs of the same kind had proven ineffective. Bouvier, *Law Dictionary and Concise Encyclopedia*, II, 2612; Blackstone, *Commentaries*, IV, 319. For the *alias capias* and the *pluries capias*, see Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (3 vols.; London: Macmillan and Co., 1883; reprinted New York: Burt Franklin, n. d.), I, 240.

<sup>136</sup> Anne Arundel County Court Judgment Record, Liber R. C., p. 315. An *exigent* was a writ requiring the sheriff "to cause the defendant to be proclaimed, required, or exacted, in five county courts successively," to surrender. Blackstone, *Commentaries*, III, 283-384; IV, 319. If the defendant did not surrender he was outlawed. *Black's Law Dictionary* (6th edition), p. 574.

<sup>137</sup> Anne Arundel County Court Judgment Record, Liber R. C., p. 373.

<sup>138</sup> *Ibid.*, p. 510.

<sup>139</sup> *Ibid.*, p. 535.

<sup>140</sup> Thus:

This being an Indictment found several Courts past against the Defend for an assault on the body of a Certaine Benj<sup>th</sup>ffreeman wherein there Issued an Exigent returnable to this Court of which the sheriff of Ann<sup>l</sup> Co<sup>ty</sup> makes return thereof Endorst Mortus Est

Stephen Warman sher.

Anne Arundel County Court Judgment Record, Liber R. C., p. 569.

A case of bastardy against Joane Deveau alias Evans at the Charles County court for March of 1712/13 illustrates the series of writs, with the progress of the case — “6 Cap’s,” “Als Cap’s,” “Plures Cap’s” — noted in the margin. Joane Deveau finally confessed and was whipped after being “stripp[ed] fro<sup>m</sup> the wast upwards.” She also had to pay an unspecified amount in officers’ fees. The number of stripes she received is torn out. Charles County Court Record, Liber E, No. 2, pp. 212-213.

<sup>141</sup> Provincial Court Judgment Record, Liber V. D., No. 3, pp. 106, 225, 244; Liber P. L., No. 4, pp. 77-80, 235.

<sup>142</sup> See Text above at Notes 119-128.

<sup>143</sup> Benjamin Tasker’s and Stephen Warman’s returning the writs against Macnemara from August of 1718 through March of 1718/19 and Warman’s certifying to the Anne Arundel County court in June of 1719 that Macnemara was not to be found in his bailiwick apparently indicates that Macnemara was outside the province, while Warman’s returning the *exigent* to the August court endorsed “not Executed” (see Text above at Note 138) might mean that he was back in the province but too sick to come to court, though the correct endorsement in such a case would have been *cepi languidus*. *Black’s Law Dictionary* (6th edition), p. 225; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, p. 183. If Macnemara had already been dead Warman should have returned the writ *mortuus est* (*mortus est*),

as he endorsed the *exigent* against him in November of 1719. Anne Arundel County Court Judgment Record, Liber R. C., p. 569. For *mortuus est*, see also *Black's Law Dictionary* (6th edition), p. 1013; Ellefson, *The Provincial Court and the County Courts in Maryland, 1733-1763*, p. 183.

The Chancery Record, however, makes it appear that Macnemara might have been back in the province by 20 May 1719. The record is ambiguous. Chancery Record 3, p. 434.

<sup>144</sup> Provincial Court Judgment Record, Liber W. G., No. 1, pp. 1, 31.

<sup>145</sup> The record makes it appear that Griffith produced the petition and the response immediately after he pleaded guilty and that therefore he did not need until the twenty-fourth to petition Hart. Since Griffith did not petition Hart until after he was indicted, it might make more sense to believe that Griffith was indicted and pleaded guilty soon after the court opened on 15 July 1718 and that the justices gave him plenty of time to petition Hart before they passed judgment against him.

<sup>146</sup> Provincial Court Judgment Record, Liber P. L., No. 4, pp. 3, 76-77.

<sup>147</sup> I do not include this action on the *scire facias* because we cannot be sure that it involved any alleged criminal action on Macnemara's part. See Note 61 above. And the figures that appear on the pages that follow do not include Bernard White's bill of indictment against Macnemara for assault that the grand jury at the Baltimore County in August of 1717 returned *ignoramus*.

<sup>148</sup> The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127; The National Archives (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.

## *Chapter 10*

### *John Hart's Vendetta, 1716-1719*

While William Bladen was busily harassing Thomas Macnemara with one unsuccessful indictment after another, Governor John Hart was not idle. Like Bladen, he was determined to give Macnemara as hard a time as he could. If he could get Macnemara to leave the province forever, so much the better. He did not succeed at that, but he did suspend Macnemara from his practice in chancery and then twice got him disbarred in the entire province,<sup>1</sup> and when Macnemara died he was clearly delighted.<sup>2</sup>

When the hostility between Hart and Macnemara started is unclear, but early in 1716 they appear to have been getting along well enough. At the Prince George's County court for March of 1716 Macnemara was Hart's attorney in an action of trespass on the case in which Hart recovered 6,300 pounds of tobacco damages and 364 pounds of tobacco costs from Christopher Barnes.<sup>3</sup>

A few months later, however, Macnemara apparently set the stage for the estrangement when at a special court of oyer and terminer in Annapolis on 10 July 1716 he defended the Catholics who were accused of firing the guns of Annapolis on the night of 10 June 1716 to celebrate the birthday of the Pretender.<sup>4</sup> Hart started the fight when on 4 October 1716 he and his council called Macnemara before them to inquire into his "Character Principles in Religion [and] Loyalty & Affection" to King

George and "his most August Family." Macnemara's resentment burst out a week later when in Annapolis he publicly announced that on that occasion Hart and his council had acted like the Spanish Inquisition. At the provincial court for April of 1718 the grand jury indicted him for the seditious speech against Hart and his council, but later he was the beneficiary of the king's general pardon because his offense occurred before 1 May 1717 and so was never tried for that offense.<sup>5</sup>

Sometime after 11 October 1716 Macnemara went to England,<sup>6</sup> where, as he admitted to Hart later,<sup>7</sup> he tried to get Hart fired for allegedly smuggling wine, raisins, sugar, Florence oil, and corks in a vessel belonging to Hart and his partners in May of 1715.<sup>8</sup> Returning to Maryland in the spring of 1717,<sup>9</sup> he must have had fears of another disbarment, since in a letter of 16 November 1717 Guilford, in response to Macnemara's letters of 22 June and 12 July, assured him that he had written to Hart "to Order Matters" so that Macnemara would "not by any means be Interrupted in . . . [his] practice."<sup>10</sup> In the mid-summer of 1717, after warning Maurice Birchfield against appointing Macnemara collector of Patuxent,<sup>11</sup> Hart himself, on the orders of Baltimore and Guilford,<sup>12</sup> appointed Macnemara the naval officer of Patuxent.<sup>13</sup> Macnemara's failure to become collector of Patuxent, a position for which, according to Hart, he lobbied in England,<sup>14</sup> no doubt increased his resentment toward Hart, and on 13 July 1717, the day after the second letter to Baltimore and Guilford, he allegedly spoke publicly in a "threatning manner and accent" about Hart for granting a *supersedeas* in the case of Andrew Dalrymple, and on 13 August 1717 he allegedly threatened to have Hart arrested if anybody complained against him.<sup>15</sup> The indictment in which the grand jury at the provincial court for September of 1717 charged him with both of those offenses, however, was never tried.<sup>16</sup>

When the chancery court met on 10 October 1717, exactly one month after the



grand jurors at the provincial court returned the six indictments against Macnemara — including the one for allegedly speaking in a “threatning manner and accent” about Hart and for threatening to have him arrested<sup>17</sup> —, the first thing Hart did was to try to pick a fight with him. Macnemara appears to have wanted to avoid the quarrel if he could avoid it without having to grovel, but if that was his hope he did not succeed.

As soon as the court opened, Hart claimed that Macnemara had accused him of calling him — Macnemara — “a Rogue & a Rascall” in chancery court and denied that he had ever said such a thing.<sup>18</sup> Instead of backing down completely, Macnemara offered Hart a way in which they could both save face. “To the best of his remembrance,” he told Hart, Hart “did Call him a Rogue and a Rascal.”

Implicitly Macnemara was telling Hart that he might be remembering wrong, but that was not enough for Hart. Instead of accepting Macnemara's gesture, which would have required him to admit that he might be remembering wrong, too, he considered Macnemara's concession only an “alleviation”<sup>19</sup> and now could accuse Macnemara of calling him a liar for his refusal to accept his denial.<sup>20</sup> “By taxing the Governour with a Falsity,” Hart claimed, Macnemara was guilty of a contempt that decreased Hart's authority and the grandeur of the court. Hart ordered Bladen to prosecute Macnemara for his words,<sup>21</sup> but apparently there was no such prosecution.

Macnemara's language makes it appear that he was trying to smooth things over without backing down completely. He did not, after all, call Hart a liar. He did not insist that Hart had called him a rogue and a rascal in the chancery court but rather said only that “to the best of his remembrance” Hart had used those words. Implicitly he agreed that Hart's denial might be true. Hart could have told him that his memory was faulty and could have left it at that. Such niceties are what compromise and

diplomacy are all about, but Hart, always worried about his reputation and loving to lord it over people, knew nothing about either compromise or diplomacy, and he would not be placated by less than a total submission.

With the ordering of Macnemara's prosecution Hart still was not through with him. The next thing he did was to suspend Macnemara from his practice in the chancery court because, he claimed, Macnemara had frequently behaved himself in court "with threatenng words and an Indecent and Irreverent Behaviour." Even though Hart had admonished him several times, Macnemara continued "his Obstinate and Contemptuous manner of Treating . . . [the] Court." Hart did honor the request of Maurice Birchfield, the king's surveyor general of customs, that he allow Macnemara to complete the cases that as Birchfield's attorney he already had in progress in the chancery court on behalf of the Crown,<sup>22</sup> but except for those he would be suspended until he was willing to make "his due Submission."<sup>23</sup>

Macnemara immediately asked for an appeal to the king. Hart granted the appeal, "so farr as it . . . [would] avail him," with the suggestion that the proper appeal would be to the proprietor instead. Macnemara took Hart's advice and petitioned him for an appeal to the proprietor. Though he had entered his appeal of Hart's order in chancery suspending him from his practice there to the king in council, Macnemara told Hart, since the king had restored the province to the Baltimores he "humbly Conceive[d] it Proper to Appeal to his Lordship." Therefore he beseeched Hart that his appeal might be granted and entered accordingly.

Macnemara also humbly prayed that Hart tell him the specific instances of his alleged misbehavior, a consideration to which he presumed he was entitled in law and justice, so that he would be able either to defend himself or to make his due submission, which he was ready to do when he knew what he had done wrong or when

he was legally convicted of something.<sup>24</sup> Hart did grant the appeal to the proprietor — which, of course, he could hardly have refused.

If Hart thought that Macnemara's suspension from his practice in the chancery court would make him any more malleable it did not take him long to find out that he was wrong. When immediately after the suspension he demanded of Macnemara the fees for the seals on the actions that Maurice Birchfield conducted for the Crown against "Sundry Persons,"<sup>25</sup> Macnemara told him that no fees were due to him. Hart then affirmed before Macnemara and Maurice Birchfield that about two years earlier Macnemara "Assured him that he should be paid the ffees ffor the Seales on that Account, And that M' Loyd should not be paid his ffees."<sup>26</sup> Thus it appears that Hart was willing to do Colonel Philemon Lloyd II, who was deputy secretary of the province,<sup>27</sup> out of his fees.

Stung by Macnemara's allegation in England that he had "so farr awed or influenced" the customs officers of Maryland that they did not require him and his partners to enter the goods that they imported in May of 1715,<sup>28</sup> Hart craved vindication, but Macnemara again refused to humor him. Still in the chancery court on 10 October 1717, Hart asked Maurice Birchfield to declare as a gentleman whether he knew of any occasion on which he had hindered or impeded the business of the Crown. Birchfield declared that he never knew or heard of any such instance.

Birchfield's assurance, however, was not enough. Without referring to Macnemara as a gentleman, Hart demanded that he answer the same question. Macnemara, having either to repudiate his charge in England that Hart had imported goods illegally or to risk stirring up Hart's resentments even further, answered coyly that he did not care to answer that question.

Frustrated again, Hart shifted the blame for any delays in the business of the

Crown back to Macnemara. He declared that Macnemara had hindered and delayed the affairs of the Crown in Maryland by pursuing his own private affairs by soliciting in England for the collectorship of Patuxent.<sup>29</sup>

On 12 October 1717 Hart responded to Macnemara's request for particulars,<sup>30</sup> even though, Hart pointed out irrelevantly, contrary to his view of proper procedure Macnemara had first asked for an appeal to the king in council. Unable to resist the temptation to claim victory wherever he could, no matter how insignificant, Hart reminded Macnemara that now he seemed to arrogate Hart's opinion to himself — that is, he had decided to appeal to Baltimore and Guilford rather than to the king.

To Macnemara's request that Hart specify his offenses, Hart was as vague and as defensive as he and the assembly would remain for the rest of Macnemara's life. Ignoring the reality that Macnemara was asking for nothing but what anyone accused of acting improperly had every right to expect, Hart pointed out that he had already given Macnemara verbal notices of his "manifest Contempt and undecent Behaviour in Chancery Court" and that nothing could be "a Stronger mark of . . . [Macnemara's] Obstinacy than to plead Ignorance of them."

Hart would, however, be generous. In order to give Macnemara an opportunity to be sorry for his affronts to the authority of the chancery court and to induce him to make the submission that Hart expected of him and without which Hart could not revoke the order suspending him "without prostrating the Honour of the Court," he would give Macnemara some illustrations of his recent misbehavior.

After promising much, Hart produced little or nothing for which any lawyer should have to apologize and in fact implicitly criticized Macnemara for being an attentive attorney. When during this session of the chancery court Macnemara

“officiously & without any Call” interrupted Hart in order to dissuade Charles Carroll from answering questions that Hart was asking on behalf of the commissioners for forfeited estates, Hart pointed out, he had managed to make Macnemara “be Silent for that time.” The next day upon Macnemara’s “giveing Ill Language to another Practitioner in the face of the Court,” Hart told Macnemara that he “would maintain the Honour of the Court and that no Persons should [*sic*] presume to make Reflections there.” When Macnemara continued to justify himself, Hart referred again to the incident with Carroll when he reminded Macnemara of his manner of opposing Hart’s questioning of Carroll as well as of “several former passages” in the chancery court.<sup>31</sup>

Hart, however, would not identify those “several former passages.” Apparently aware that his evidence would convince no objective observer of anything except that Macnemara was an effective lawyer, he fell back on the old last resort of the incomprehensible that you had to be there to see it. He would not “undertake to Express the Indecent & Contumacious Tones and Gestures” that Macnemara thought fit to use when he wanted to show his disrespect. “The Judges or Persons Present . . . [could] be Convinced” of those instances of Macnemara’s misbehavior only by seeing and observing them, and, he added weakly, for those actions Macnemara must surely know that he “ought to Express a Sorrow.”

Macnemara’s repeated provocations on the day on which he used “Ill Language to another Practitioner in the face of the [chancery] Court,” Hart continued, had made it necessary for him to speak to Macnemara “in proper terms” about his intolerable insolence and contempt on that occasion as well as earlier ones and again to assert the authority of the court.

Instead of accepting this chastisement with the humility that Hart demanded,

Macnemara always responded in a most defying manner. To deny that he had acted improperly was indirectly to charge Hart with “affirming Falsities.”<sup>32</sup> Macnemara even had the further confidence to claim falsely — and to Hart’s face — that Hart had called him “a Rogue and a Rascall the day before” when Macnemara was in court to plead for the Crown.<sup>33</sup>

For that barefaced untruth, for Macnemara’s officiously interposing himself in Hart’s examination of Charles Carroll, for his behaving himself in a contumacious manner toward the court though he was often reprimanded for it, for the many complaints that Hart had had of Macnemara’s misbehavior in the inferior courts, and for many other causes that Hart would explain when a proper authority required him to, he had suspended Macnemara from his practice in the chancery court except in cases in which Macnemara was appearing for the Crown.<sup>34</sup>

Thus in all of his assertions about Macnemara’s indecencies Hart said nothing specific that Macnemara could defend himself against. He did not report the language that Macnemara was supposed to have used, and he did not describe Macnemara’s gestures and tone of voice except to refer to them as indecent and contumacious. Interpreting Macnemara’s denials as calling him a liar made it impossible for Macnemara to defend himself against anything at all without risking a charge of contempt.<sup>35</sup>

In spite of Hart’s failure to indicate exactly what Macnemara was supposed to have done wrong and therefore unable to know what Macnemara might have had to say about any specific charges against him, Baltimore and Guilford in a letter of 4 February 1717/18 accepted Hart’s explanation as sufficient to justify Macnemara’s suspension but at the same time ordered him to restore Macnemara to his practice when the attorney made “a due Submission” to Hart “in such Terms and manner” as

Hart with the advice of his council considered appropriate.<sup>36</sup> In a letter of that same day they told Macnemara that to be restored to his practice he should “make a due Submission in Court . . . in such Terms and manner” as Hart should prescribe.<sup>37</sup>

As his refusal to endorse Birchfield's vouching for Hart's honesty illustrates, Macnemara refused to grovel, but probably even groveling would not have been enough to get him back into Hart's good graces. In a letter to the king written sometime after 10 June 1716 Mary Hemsley had accused Hart himself of being too soft on the Catholics,<sup>38</sup> and one possible way for him to restore or to maintain his reputation for religious purity was to direct his thunder toward the most vulnerable target, the skillful attorney who counseled Catholics even though he claimed to be no longer a Catholic himself.<sup>39</sup>

Whatever the real reasons Hart might have had for being hard on Macnemara, the quarrel continued, and later the two could not agree even on whether Macnemara had apologized to Hart, who continued to insist that for Macnemara even to disagree with him was indirectly to call him a liar.

At the chancery court on 24 February 1717/18, four and a half months after he suspended Macnemara from his practice in chancery, Hart complained that Macnemara “in the face of” the chancery court “gave him the lye in Inderect [*sic*] Terms by denying that he had Ever begged his Pardon” before Maurice Birchfield and William Bladen. Hart even had Macnemara's alleged words: “I am sorry that ever I sayd anything which might offend the Governour.” But, Hart added, Macnemara had said that he would not beg the pardon of Hart's council.<sup>40</sup>

At that same court Hart and Macnemara also disagreed on whether a letter to Macnemara from Lord Guilford should be entered in the records of the chancery

court. Hart told Macnemara that "it would be better for him to let it alone than to have it Recorded," but Macnemara insisted, and the letter was finally entered in the records of that court.

Guilford's letter, dated 16 November 1717, was a response to two letters that Macnemara had written on 22 June and 12 July 1717. Apparently Macnemara, well aware that Hart either knew or soon would know about Macnemara's trying to get him fired during his recent trip to England, was afraid of being suspended again from the practice of law in Maryland, and Guilford told him that he had written to Hart "to order matters" so that Macnemara would not be interrupted in his practice. At the same time, Guilford did "not think fitt to meddle at all with the Proposall" between Macnemara and William Bladen.<sup>41</sup>

What the proposal between Macnemara and Bladen was does not appear, but trouble between them was brewing. Just over a month after Macnemara wrote the second letter to Guilford, Bladen complained to the Anne Arundel County court for August of 1717 that Macnemara had "Call'd him [a] Blockhead booby and Gave him the Lye thrice,"<sup>42</sup> and at the provincial court less than a month later Bladen got the six indictments against Macnemara.<sup>43</sup>

It is not difficult to see why Hart would have preferred to keep Guilford's letter hidden. He suspended Macnemara from his practice in the chancery court on 10 October 1717, before Guilford wrote the letter on 16 November 1717. Macnemara might argue that if Hart followed Guilford's instructions he would have to restore him to his practice again. More than that, he had no intention of ordering matters so that Macnemara would not be interrupted in his practice. Rather he would conduct the interview with Macnemara in May of 1718 with an arrogance that all but guaranteed that Macnemara would not submit.<sup>44</sup> The sooner the letter disappeared from



public knowledge, the better for Hart.

Far from restoring Macnemara to his practice in chancery, at the next session of the assembly Hart got him disbarred in the entire province.<sup>45</sup>

## *Chapter 10*

### *John Hart's Vendetta, 1716-1719*

<sup>1</sup> I consider John Hart's suspension of Thomas Macnemara from his practice in chancery later in this chapter at Note 23ff. For Macnemara's disbarment in the entire province, see Chapter 11, "Disbarred Again, 1718," and Chapter 13, "Disbarred Once More, 1719."

<sup>2</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXXIII, 482, 492-493, 571.

<sup>3</sup> Prince George's County Court Proceedings, Liber H, pp. 42-43.

<sup>4</sup> The Pretender was James Edward, the Old Pretender, the son of James II. He was born in 1688 and died in 1766. Sir George Clark, *The Later Stuarts, 1660-1714* (2nd edition; Oxford: The Clarendon Press, 1955), pp. 240-243 and Genealogical Table.

For the firing of the guns in Annapolis on 10 June 1716, see *Md. Arch.*, XXX, 372-374; XXXIII, 480-481; Chapter 11, "Disbarred Again, 1718," at Notes 68-70, 97-98; Chapter 13, "Disbarred Once More, 1719," at Notes 17, 42.

<sup>5</sup> Provincial Court Judgment Record, Liber V. D., No. 3, p. 234; Liber P. L., No. 4, pp. 83-84; Chapter 9, "Harassment by Indictment, 1712-1719," Note 100.

<sup>6</sup> For Macnemara's trip to England in 1716, see Chapter 1, "Character," Note 58.

<sup>7</sup> *Md. Arch.*, XXXIII, 181-182, 258-259.

<sup>8</sup> The National Archives (PRO), Colonial Office 5, Vol. 720, No. 15; The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXX, No. 289.

<sup>9</sup> For the ambiguity about when Macnemara returned to Maryland, see Chapter 1, "Character," Note 58.

<sup>10</sup> *Md. Arch.*, XXXIII, 130; Chancery Record 3, pp. 413-414.

<sup>11</sup> *Md. Arch.*, XXXVI, 526, 528.

<sup>12</sup> *Ibid.*, XXXIII, 170; Chapter 7, "Respectability, 1713-1719," at Note 52.

<sup>13</sup> Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 159; Chapter 7, "Respectability, 1713-1719," at Note 53.

<sup>14</sup> Chancery Record 3, p. 401.

<sup>15</sup> *Md. Arch.*, XXXVI, 530-532. Macnemara appears to have been in particularly fine form that summer. On 15 August 1717, only four and a half weeks after he allegedly spoke in a threatening way about Hart and only two days after he allegedly threatened to have Hart arrested, he allegedly called William Bladen a "Blockhead booby" and "Gave him the Lye thrice." Anne Arundel County Court Judgment Record, Liber R. C., pp. 31-32.

For these alleged incidents, see Chapter 9, "Harassment by Indictment, 1712-1719," at Notes 70, 97, 107.

<sup>16</sup> *Ibid.*

<sup>17</sup> The provincial court met on 10 September 1717. Provincial Court Judgment Record, Liber V. D., No. 3, p. 106. For all of these indictments, see Chapter 9, "Harassment by Indictment, 1717-1719," at Notes 70-72.

<sup>18</sup> When Thomas Macnemara was supposed to have said that John Hart had called him a rogue and a rascal in the chancery court is unclear, but it had to be sometime before 10 October 1717, the day on which Hart first claimed that Macnemara had made such an accusation.

<sup>19</sup> “. . . with this alleviation Only, that to the best of his Remembrance his Excellency did Call him a Rogue & a Rascall.” Chancery Record 3, p. 397. The record of the upper house has “alteration” instead of “alleviation.” *Md. Arch.*, XXXIII, 127.

<sup>20</sup> Possibly Macnemara and Hart were disagreeing only over *when* Hart called Macnemara a rogue and a rascal. Hart denied only that he had used those words “in this Court” (*Md. Arch.*, XXXIII, 127; Chancery Record 3, p. 397), though later he says that Macnemara accused him of calling him a rogue and a rascal when Macnemara “Came to Plead for the Crown.” *Md. Arch.*, XXXIII, 130; Chancery Record 3, p. 400. That could mean either that Hart was supposed to have used the words before the court opened or during the actual proceedings.

If Hart used the words before the court opened but in the courtroom, both men could have been right. The record makes it appear, however, that Hart was denying that he used the words at all. If that is true, one of the men either had a very bad memory or was a straight-out liar.

<sup>21</sup> *Md. Arch.*, XXXIII, 127; Chancery Record 3, p. 397.

<sup>22</sup> *Md. Arch.*, XXXIII, 127-128.

<sup>23</sup> *Ibid.*; Chancery Record 3, pp. 397-398.

<sup>24</sup> *Md. Arch.*, XXXIII, 128; Chancery Record 3, p. 398.

<sup>25</sup> Apparently these are the cases discussed in Chapter 7, “Respectability, 1713-1719,” at Notes 59-87. For the case against Abraham Birkhead, see also Chapter 9,

“Harassment by Indictment, 1712-1719,” at Notes 114-118.

<sup>26</sup> Chancery Record 3, p. 400.

<sup>27</sup> Owings, *His Lordship's Patronage*, p. 128.

<sup>28</sup> TNA (PRO), Colonial Office 5, Vol. 720, No. 15; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXX, No. 289; Chapter 7, “Respectability, 1713-1719,” at Notes 37-38.

<sup>29</sup> Chancery Record 3, p. 401.

<sup>30</sup> Though Hart responded to Macnemara's petition on 12 October, John Beard, the register in chancery (Owings, *His Lordship's Patronage*, p. 142), included both the petition and Hart's response in what appear to be the records of the chancery court for 10 October 1717.

<sup>31</sup> Macnemara's alleged interruption of Hart in his questioning of Charles Carroll and his allegedly speaking discourteously to another attorney the next day do not appear in the records of the chancery court. Chancery Record 3, pp. 387-396.

<sup>32</sup> The record of the upper house in the *Archives* here has “in direct Terms” rather than “in Indirect Terms.” *Md. Arch.*, XXXIII, 130; Chancery Record 3, p. 400.

<sup>33</sup> Again there is confusion over just when Macnemara was supposed to have accused Hart of calling him a rogue and a rascal in the chancery court. See Notes 18 and 20 above.

<sup>34</sup> *Md. Arch.*, XXXIII, pp. 129-130; Chancery Record 3, pp. 399-400.

<sup>35</sup> Hart had a very strong sense of his own importance, and Macnemara refused to treat him with the awe and the reverence that he appears to have thought he deserved. Hart always spoke of the reverence due him as the representative of the proprietor, but it is hard to escape the impression that he thought that he deserved it himself and that therefore if someone did not show him that reverence he considered it

appropriate for him to be as obstinate and contemptuous as he accused Macnemara of being.

While Macnemara might have been aggressive and possibly even sarcastic, he might have been no worse than other attorneys in eighteenth-century Maryland, where, apparently, attorneys were generally very aggressive and antagonistic and sometimes even lawless. Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989 ), pp. 127-130.

<sup>36</sup> *Md. Arch.*, XXXIII, 134-135; Chapter 11, "Disbarred Again, 1718," at Notes 28-31.

<sup>37</sup> *Md. Arch.*, XXXIII, 170-171; Chapter 11, "Disbarred Again, 1718," at Notes 32-37.

<sup>38</sup> TNA (PRO), Colonial Office 5, Vol. 720, No. 26; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXX, No. 288. Mary Hemsley's attack on Hart came at about the same time that Macnemara tried to get him fired. In the *Calendar of State Papers* Macnemara's attack immediately follows Mary Hemsley's. TNA (PRO), *Calendar of State Papers: Colonial Series*, XXX, Nos. 288, 289.

<sup>39</sup> Being tough on Catholics was also in the interest of the proprietor, whom by 29 May 1717 some had accused of being "A Papist in Masquerade." *Md. Arch.*, XXXIII, 4, 5, 55, 56.

<sup>40</sup> *Md. Arch.*, XXXIII, 130. The exchange between Hart and Macnemara over whether Macnemara had apologized to Hart is not included in the records of the chancery court. Chancery Court 3, pp. 403-409.

<sup>41</sup> *Md. Arch.*, XXXIII, 130; Chancery Record 3, pp. 413-414.

<sup>42</sup> Anne Arundel County Court Judgment Record, Liber R. C., pp. 31-32; Chapter 9, "Harassment by Indictment, 1712-1719," at Notes 1, 65-68.

<sup>43</sup> Provincial Court Judgment Record, Liber V. D., No. 3, p. 106; Chapter 9, "Harassment by Indictment, 1712-1719," at Notes 71-72.

<sup>44</sup> *Md. Arch.*, XXXIII, 168-169.

<sup>45</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 515-517; Chapter 11, "Disbarred Again, 1718."

*Chapter 11*  
*Disbarred Again, 1718*

By the time the assembly met on 23 April 1718<sup>1</sup> the destruction of Thomas Macnemara had become one of Governor John Hart's dominant ambitions. Macnemara's fate had always been tightly tangled with that of the Catholics, and Hart would get his revenge against both at the same time. The assembly not only disbarred Macnemara from the practice of law in the province but also revoked the Catholics' right to vote and reinstated the harsh English law against them.

Hart's hostility toward Macnemara and the Catholics was probably based on a combination of prejudice, fear, and ambition. Having someone as competent and as courageous as Macnemara in the province threatened Hart's freedom of action, as Macnemara's trying to get him fired illustrates,<sup>2</sup> and having someone as courageous and ambitious as Charles Carroll in the province was a threat to his own ambition. The political participation of the Catholics, or even their mere presence in the province, only made people such as Macnemara and Carroll all the more dangerous.

In his opening speech to the assembly on the twenty-third<sup>3</sup> Hart told the two houses he had hoped that for the rest of his administration he would have the leisure to concern himself with the good and welfare of the province, just as he had faithfully



done previously. Such was the restless and turbulent spirit of some of the Papists and their adherents, however, that they still continued to persecute and defame him. He had been authentically informed that Charles Carroll and Thomas Macnemara had made fresh complaints against him. Speaking to the assembly of their behavior was “the most Candid and open method” not only to inform their Lordships of the misconduct of the Catholics but also to counter “those artful & false Insinuations with which they Endeavour[ed] to amuse and poyson the minds of the Good People” of the province into thinking that there was neither law nor justice in his administration.<sup>4</sup>

Thus Macnemara was clearly one of the alleged adherents to the Catholics whom Hart was talking about. As he makes clear in his opening speech to the two houses two years later — on 6 April 1720<sup>5</sup> — Macnemara was one of the emissaries to whom he refers when later in this earlier speech he claimed that the “Leading men of the Romish Comunity [*sic*]” had raised a very large sum of money to send emissaries to London, where they had been very active against him.<sup>6</sup> Apparently Carroll was one of those emissaries.<sup>7</sup>

After a long fulmination against Carroll and the Catholics Hart briefly turned his attention to Macnemara. The members of the assembly knew “the man & his Conversation,” and they were not ignorant of the disturbances he had caused the government for almost as long as he had been in the province. Later, Hart promised, he would explain his reasons for suspending Macnemara from his practice in the chancery court, and since Macnemara had complained that Hart had been both judge and party in the case he would ask the assembly to consider whether by the laws of the province such insolence as Macnemara’s was exempt from punishment.

Finally, Hart reported “two Remarkable Instances of the Notorious falsities”

that his enemies were circulating about him. The first was that he denied the Roman Catholics of the province freedom in commerce, and the second was that he had most unmercifully beaten Macnemara. Hart did not bother explicitly to deny the charges but, all innocence, was hurt. Against such wicked men, who would resort to gross calumnies to serve their interests, he asked rhetorically, what innocence could protect? And, all conscientiousness: “Who that wou’d make a Conscience of his Duty . . . [could] be safe in the Execution of it[?]”

Hart hoped that such lies would not deter the magistrates from doing their duty to the king and the proprietor. He himself was firmly resolved to support both. Obviously convinced that the Catholics would continue to persecute him in the future as they had in the past, he was determined to stand firm:

Nor shall any Reflections on the Past Effects of the malice of the Roman Catholicks and their Adherents towards me, nor any Apprehension of their future Rage, Slacken my Endeavours, towards the Establishing the Protestant Interest in this Province under the auspicious Protection of our Sovereign Lord King George And his Lordship’s Government.<sup>8</sup>

Nobody needed to be told that Charles Carroll and Thomas Macnemara were the “adherents” with whom Hart was most concerned.

Since Macnemara was one of the subjects of Hart’s opening speech, it is not surprising that he would want a copy of it. That day or the next he asked Michael Jenifer, who had succeeded him as the clerk of the lower house,<sup>9</sup> for a copy, and when Jenifer did not provide it soon enough, according to the complaint of one of the delegates, Macnemara “used Severall Expressions Seemingly to extort” the copy from Jenifer and also added some reflections on the lower house. On the twenty-fourth the delegates ordered Macnemara to appear to answer for his behavior, and when he appeared that same afternoon and told them that he had been drinking wine

and did not remember that he had used any reflections against the lower house but that if he did he was sorry for it, and the delegates excused the offense.<sup>10</sup>

The day after that, on Friday, 25 April 1718, Hart showed the members of the upper house copies of the three indictments that grand juries at the provincial court had found against Macnemara but that had not yet been tried. The first is the one in which the grand jurors at the provincial court for September of 1717 accused Macnemara of indirectly threatening Hart by telling Michael Howard on 13 July 1717 that “he wished he cou’d see the man” who had dared to grant the *supersedeas* that negated a writ of *replevin* by which Macnemara would have recovered for his client, Andrew Dalrymple, a sloop and its cargo that William Stoughton, the collector for the district of Pocomoke, had seized.<sup>11</sup> In that indictment the grand jurors also charged that on 13 August 1717 Macnemara threatened to have Hart arrested.

The second indictment is the one in which the grand jurors at that same court charged that on 30 September 1716 Macnemara “Deceitfully Injuriouly & unlawfully” took 1112 pounds of tobacco from John Brannock<sup>12</sup> for attorney’s fees when he did not have those fees coming to him, and the third indictment is the one in which the grand jurors at the provincial court for April of 1718 accused Macnemara of saying on 11 October 1716 that Hart and his council acted like the Spanish Inquisition when they questioned him a week earlier.<sup>13</sup>

It was with the first indictment that Hart was most concerned. Macnemara, he claimed, had got the writ of *replevin* illegally, and he showed the members of the upper house the paragraph from his instructions of 1 July 1715 by which the king ordered him to aid and assist any of the king’s officers in enforcing the acts of parliament and to prosecute anyone who hindered or resisted any of the customs officers in any way. Thus he had issued the *supersedeas* not only in the proper discharge of

his office “but also by an Express Comand from his Majesty,” and with his threatening speeches Macnemara in a most insolent way had tried to obstruct him in the performance of his duty.<sup>14</sup>

None of these three indictments was ever tried. The first two were still outstanding when Macnemara died,<sup>15</sup> and on the third one the justices of the provincial court for July of 1718 entered the king’s pardon, since Macnemara had committed the alleged offense before 1 May 1717.<sup>16</sup>

Apparently already planning Macnemara’s disbarment, the upper house sent the outstanding indictments to the delegates.<sup>17</sup> If they were going to get Macnemara disbarred, Hart and the members of the upper house needed all the evidence they could find, and emphasizing Macnemara’s presumed guilt on these indictments, even though they had never been tried, might buttress their case.

Along with the indictments the upper house sent the delegates a copy of the proceedings in the chancery court on 10 October 1717 and 24 February 1717/18. Like the indictments, these proceedings would remind the delegates of Macnemara’s troubles with Hart and would help to provide a basis for taking action against him.

The proceedings of 10 October 1717 provided details of Hart’s suspension of Macnemara from his practice in chancery until he made an appropriate submission for his “Indecent and Irreverent Behaviour” and his continued “Obstinate and Contemptuous manner of Treating” the court after Macnemara in spite of Hart’s denials continued to insist that to the best of his recollection Hart had called him a rogue and a rascal in the chancery court. Hart interpreted Macnemara’s refusal to accept his denial as an implicit accusation that he was lying.

On 24 February 1717/18 Hart again accused Macnemara of indirectly calling him a liar by denying that he had ever begged Hart’s pardon. On that day also Mac-

nemara insisted that Guilford's letter of 16 November 1717 informing him that he had told Hart "to order matters" so that Macnemara would not be interrupted in his practice be entered in the records of the chancery court even after Hart told Macnemara that it would be better for him "to let . . . [the letter] alone than to have it Recorded."<sup>18</sup>

On that same day — 25 April 1718 — Hart also sent the delegates the opinions of the three lawyers concerning the "Act for Suspending the Prosecution of Popish Priests," the act by which the assembly allowed Catholic priests to function in private families.<sup>19</sup>

Both houses supported Hart against both Macnemara and the Catholics. In their response to him on 26 April the members of the upper house did not directly mention Macnemara,<sup>20</sup> though they did have plenty to say about the Catholics.<sup>21</sup> As members of the council they had already approved of the suspension, both in their proceedings in council and in a letter to Baltimore and Guilford,<sup>22</sup> and in a message to the lower house on 29 April 1718 they would again express their distaste for Macnemara and their support of Hart.<sup>23</sup>

The delegates also supported Hart, and their long response to him on Monday the twenty-eighth must have been everything that he could have hoped for. By that time they had had time to consider not only Hart's message but also the three indictments against Macnemara and the transcript of Hart's problems with Macnemara in the chancery court, which Hart had sent on to the delegates on the twenty-fifth after showing them to the members of the upper house.<sup>24</sup>

The delegates began their response with a long attack on the Catholics, in which they pointed out that they could not imagine any reason Charles Carroll and Thomas Macnemara could have had to complain against Hart. They knew of no injury that

Hart had done to either of them either in person or through the government.

Finally turning specifically to Macnemara, the delegates assured Hart that they were not ignorant of his “Plotting uneasy and revengfull temper” and his proud and turbulent behavior ever since he first came into the province but more especially since he had managed “to Insinuate himself into their Lordships’ Good Graces.” They were sure that he could not have won Baltimore’s and Guilford’s favor if those two men “had been as well Acquainted with his Conversation and Character” as the delegates were themselves. When Baltimore and Guilford became truly informed, Macnemara would have “less Cause to boast of their Repeated favours.”

Hart was correct, the delegates believed, in suspending Macnemara from his practice in the chancery court. The law of the province gave the courts sufficient authority to admit and suspend attorneys.<sup>25</sup> The courts were the proper judges of the behavior of those who appeared before them, and they could maintain order without any imputation of their being both judge and party. If the authority of the judges over the behavior of attorneys was reduced it would be impossible for them to preserve the decorum that was absolutely necessary in judicial proceedings, and the judges would be “Lyable to the reproach of Every Mercenary tongue.”

Macnemara had insisted on having Guilford’s letter of 16 November 1717 entered in the records of the chancery court, the delegates believed, only because he seemed to hope that Guilford supported him in his practice there without his having to show the court due respect. They were convinced that Guilford had never intended Macnemara to make such a use of his letter.

Thus, the delegates concluded, they had faithfully and impartially considered Hart’s message and the papers he had sent them and were obliged to return their humble thanks for his steady determination to support the magistrates to the best of

his ability in their discharging their duties,<sup>26</sup> and also for his assurance that he would not slacken his efforts to establish the Protestant interest in the province. After again expressing their support for Hart against the Catholics they observed that through the whole course of his administration of almost four years his government had been “just and Universally Satisfactory to all [of] his Majesty’s faithfull Protestant Subjects” in the province. Only the Roman Catholics and their adherents had complained about him, and those complaints had no other cause that they could find “Save that of party and Principle.”<sup>27</sup>

Just as in the case of John Hart, it was clear that Thomas Macnemara was the alleged adherent with whom the delegates were most concerned.

If Hart found the support of the two houses reassuring, he must also have been encouraged by a letter to him dated 4 February 1717/18 from Baltimore and Guilford. On 28 April 1718 Hart showed the letter to the upper house as “an Instance of their Lordships Justice for that Tender Consideration they . . . [had] for the Opinion of the Council.”

Baltimore and Guilford assured Hart that after considering his order suspending Macnemara from his practice in the chancery court, Macnemara’s petition and Hart’s response to it, the Journal of the council, and the council’s letter to them they entirely agreed that he had good reasons to suspend Macnemara until he “made his due Submission” to Hart “in such Terms and manner” as Hart with the advice of his council thought proper. They also expressed their great satisfaction at how well Hart and his council were preserving and guarding the proprietor’s just authority in Maryland.<sup>28</sup>

In their very short response to the council’s letter to them, which was also dated 4 February 1717/18 and which they enclosed with their letter to Hart, Baltimore and

Guilford pointed out only that their determination not to restore Macnemara to his practice until he made his due submission was evidence of how much weight the council's opinion and advice had with them.<sup>29</sup>

The upper house responded with appropriate respect. It immediately resolved that a letter of thanks be written to their Lordships "for their Great Justice both to the Governour" and to the council,<sup>30</sup> but the letter was not ready until 10 May, the last day of the session.<sup>31</sup>

With the letters to Hart and the council Baltimore and Guilford also included a response to Macnemara's letter to them. It too was dated 4 February 1717/18. While this letter does not appear in the records of the upper house until 5 May, Hart knew its contents before John Beard, the clerk of the upper house,<sup>32</sup> delivered it to Macnemara on Hart's order on 28 April,<sup>33</sup> since he had taken the precaution of making a copy of it.<sup>34</sup> No doubt the members of the council knew what was in it, too, before Hart laid it before them on 5 May 1718.<sup>35</sup>

The letter to Macnemara must have given Hart and his confederates additional satisfaction. Their Lordships told Macnemara that they were sorry that Hart's appointing him naval officer of Patuxent had not had the effect they had wished but that instead Macnemara either by himself or by contrivance with others continued to carry on his old animosity against Hart by entering into as many new schemes and projects as he could to ruin Hart's reputation.

What more immediately concerned Baltimore and Guilford, however, was that Macnemara would "pay so Little regard and Respect to the Authority of the Proprietor" as represented by Hart as the Keeper of the Great Seal sitting in the chancery court. Judging by the particular facts that Hart had set forth in his answer to Macnemara's petition, they thought that Hart had very justly suspended him from his prac-



tice there, except in cases in which Macnemara was appearing for the Crown, until he made his due submission.

Thus, unless Hart said something to their Lordships that he did not say to Macnemara, his vague response to Macnemara's request for the specific charges against him<sup>36</sup> turned out to be enough.

From their consideration of Hart's order suspending Macnemara, Macnemara's petition, and the proceedings of the council on the suspension, "amongst Other Things," their Lordships perceived that this was not the first time that Macnemara had brought himself to this same condition. For his own sake, though, they hoped that it would be the last. They had duly weighed his "Complaining Letter" and the certificates that he had sent along with it, and they had decided that before he could be restored to his practice he should "make a due Submission in Court . . . in such Terms and manner" as Hart should prescribe. He had told them that he would do that if they thought he should. They did think he should, all the more because they wanted the people of Maryland to "reap the Benefitt of that Capacity and Abilities" that even Macnemara's enemies agreed he possessed.

Finally, Baltimore and Guilford denied Macnemara's request for permission to have a deputy perform the duties of the naval officer of Patuxent. Macnemara had taken an oath to perform that job in person, and Baltimore and Guilford thought that he should. If that did not satisfy him, they were sorry for it.<sup>37</sup>

Encouraged by the letters from Baltimore and Guilford, Hart and the upper house now raked up everything they could against Macnemara. On 29 April 1718 the members of upper house sent the delegates their letter from Baltimore and Guilford and expressed their pleasure at their Lordships' readiness to support their authority

and to strengthen the hands of the justices against Macnemara's "bold & Insolent Attempts" not only in the chancery court but also in the provincial court, as the five members of the upper house who were also provincial justices knew from their own experience.<sup>38</sup>

"So Seasonable a piece of Justice in their Lordships," the members of the upper house hoped, might deter others who if Macnemara had got away with his contempts "might have followed his Evill Example of flying in the face of the Government," as Macnemara had been "too apt to do" not only in Maryland but also in Pennsylvania, as the delegates would see from the three transcripts that the members of the upper house were forwarding to them with the letter from Baltimore and Guilford.<sup>39</sup>

The transcripts would remind the delegates of Macnemara's problems in Philadelphia while he was disbarred in Maryland nine years earlier. A "Court of Record" had ordered Macnemara arrested for contempt; the grand jury at the mayor's court had requested that Macnemara be disabled from practicing law not only before that court but also in all of Pennsylvania; and a court of common pleas did disable Macnemara from practicing before it.<sup>40</sup>

In their response to the upper house the next day the delegates expressed their satisfaction that their Lordships were "so firmly resolved to maintain the Authority" of the government of Maryland against Macnemara's "many bold and Insolent Attempts." They agreed that their Lordships' firmness should discourage anyone who might be tempted to fly in the face of the government in the future.

The delegates also hoped that the transcripts from Philadelphia, which showed that Macnemara had been obnoxious to government not only in Maryland but also in other places where he had lived, would prove to Baltimore and Guilford that the prosecutions against him in Maryland did not result from partiality, since he had

“undergone the same Fate before in other Places Purely through his own haughty ambitious Temper and ill Conduct.”<sup>41</sup> Since the delegates must have known that during Macnemara’s years in Maryland the only other place he practiced law was Pennsylvania, their reference here to “other Places” where he had trouble must have been a conscious exaggeration.

By the time of that response to the upper house on the thirtieth Hart and the assembly had already deprived Catholics of the right to vote. They had had to act fast, since a special election was coming up in Annapolis to elect a delegate to replace Benjamin Tasker, who had become sheriff of Annapolis since the end of the previous session of the assembly<sup>42</sup> and therefore could not serve in the lower house.<sup>43</sup> The lower house ordered the writ of election on Wednesday, 23 April, and on the following Tuesday afternoon Hart signed the bill by which the assembly denied the vote to anyone who refused to take the oaths of allegiance or obedience, abhorrency or supremacy, and abjuration and sign the oath of abjuration and the Test.<sup>44</sup>

It was not enough, however, to destroy the Catholics’ immediate political potential, and Hart and the assembly would take advantage of their momentum by passing a law to prevent their expansion. A few hours before Hart signed the act disfranchising Catholics the lower house ordered its Committee of Laws to prepare a bill to repeal the act to prevent the growth of Popery in the province<sup>45</sup> and thus to reinstate the more severe English punishments for practicing priests. Two days later — on Thursday, 1 May — both houses passed the bill.<sup>46</sup>

Two down and one to go. The assembly now could concentrate on Macnemara, who was having his troubles not only as the naval officer of Patuxent<sup>47</sup> but also as an

attorney and by whose disbarment it could accomplish the dual purpose of getting Macnemara out of its hair and of further weakening the Catholics by depriving their alleged champion of the right to practice law.

Hart had been preparing for his confrontation with Macnemara since early in the session. In a message to the upper house on 25 April he claimed that Macnemara “in a most Insolent manner [had] endeavoured to obstruct” him in his responsibility to assist the king’s collector and had threatened him in speeches “mentioned in the annexed Paper.”<sup>48</sup> The annexed paper was the record of the chancery court for 10 October 1717, when Hart suspended Macnemara from his practice in chancery, and 24 February 1717/18, when Hart and Macnemara had the run-in over whether Macnemara had called Hart a liar as well as over whether Guilford’s short letter of 16 November 1717 to Macnemara should be entered into the records of the chancery court.<sup>49</sup> Hart then sent the papers to the lower house along with three indictments against Macnemara.<sup>50</sup>

On the afternoon of Monday, 5 May 1718, five days before the end of the session, Hart suggested that the upper house call Macnemara before it to inform the members whether or not he had anything to say about the letter from Baltimore and Guilford that John Beard had delivered to him exactly a week earlier.<sup>51</sup> Macnemara appeared immediately, but he was as obstinate as ever and insisted that Hart proceed exactly as Baltimore and Guilford had ordered him to. Hart, as obstinate as Macnemara, refused to do that. Instead, he tried to shift the initiative to Macnemara, and Macnemara refused to take it.

When Hart asked Macnemara whether he had received the letter from Baltimore and Guilford that Hart had forwarded to him, Macnemara replied that he had. Hart then violated his instructions from Baltimore and Guilford by asking Macnemara

whether he had anything to offer him “by the Comand of their Lordships.” Macnemara replied that he had not, and, getting as technical as any good lawyer should, he reminded Hart that Baltimore and Guilford had said that Hart “was to make Proposals” to *him*.

Of course Macnemara was right. Baltimore and Guilford had told him that he should make his submission “in such Terms and manner” as Hart should prescribe.<sup>52</sup> They had told Hart the same thing: Macnemara should make “a Due Submission” to him “in such Terms and manner” as Hart with the advice of his council thought proper.<sup>53</sup> Their Lordship’s loose language might have enabled Hart to believe that he could do as he pleased, but to a meticulous attorney “Terms and manner” would mean more than only asking a man what he had to say for himself.

Hart, however, was the one with the power, and he suggested neither terms nor manner. When Macnemara reminded him that he was supposed to make proposals to him, Hart did not contradict him but asked him simply whether he —Macnemara — had made any applications to him — Hart — since he received the letter from Baltimore and Guilford. Of course Hart knew the answer to that, and the members of the upper house must have known it also. Hart’s object must have been simply to get all of this in the record, as much as possible in Macnemara’s own words, to be used against him later. When Macnemara answered that he had not made any such applications, Hart asked him whether he had any to make at that time, and again Macnemara answered that he had not.

And that was all.<sup>54</sup>

The issue of who would make the first move was not a small one. Hart was insisting on a humiliation that Baltimore and Guilford had not demanded and that he must have known Macnemara could not accept. His instructions were to prompt

Macnemara. He could have prepared an apology for Macnemara to read, as the lower house did for John Leeds in 1738 — though John Leeds refused to read it —,<sup>55</sup> and by simply repeating what Hart had prepared Macnemara would have avoided the additional humiliation of begging Hart to forgive him in his own words. That, however, would have made it too easy for Macnemara, even if he had been forced to read the apology on his knees.<sup>56</sup>

By violating his instructions, Hart all but guaranteed that Macnemara would not submit. He refused to do what Baltimore and Guilford had instructed him to do. He suggested nothing; Macnemara refused to surrender; and Hart not only preserved the excuse for refusing to restore him to his practice in chancery but by using Macnemara's refusal to make an offer of submission as "a further Confirmation of his Obstinacy & Contumaciousness"<sup>57</sup> he also provided an additional excuse for the assembly to ban him from the practice of law in the entire province.

It appears quite clear that Hart and the members of the upper house had no intention of allowing Macnemara to submit. Four of the five provincial justices who were members of the upper house had already written up a "humble Representation" against him that they concluded by threatening to resign as justices if he continued to practice before the provincial court.<sup>58</sup> Possibly if Macnemara's livelihood was taken away from him he would leave the province; Hart and his confederates would be quit of him; and the Catholics would lose the services of the man who might have been the best attorney in the province.

Not only having no intention of encouraging Macnemara to make a submission that would force Hart to restore him to his practice in chancery but also determined to get him disbarred entirely, Hart and the members of the upper house proceeded

with their plot. Immediately after questioning Macnemara on that afternoon of 5 May 1718 Hart laid before the upper house his letter from Baltimore and Guilford,<sup>59</sup> which the members of the upper house had already seen exactly one week earlier,<sup>60</sup> as well as their Lordships' letter to Macnemara.<sup>61</sup> Immediately after that one of the members of the upper house moved that those members who were also justices of the provincial court should provide the House with a written account of all the affronts and indignities that they could remember Macnemara's having "Offered to them in the Execution of their Office." Such a relation might "Serve as a Rule for a further Proceeding" of the upper house.<sup>62</sup> That further proceeding would be a recommendation that the lower house bring in a bill to disbar Macnemara.<sup>63</sup>

The four provincial justices, who constituted a majority of the upper house that day,<sup>64</sup> had come well prepared, and they immediately presented their "humble Representation" against Macnemara.<sup>65</sup>

The hypocrisy is almost palpable. Even while Hart was ostensibly trying to get Macnemara to submit so that Hart could restore him to his practice in chancery, the four provincial justices had ready the attack in which they threatened to resign if Macnemara continued to practice before the provincial court and that the assembly would use as part of the justification for the law by which it disbarred Macnemara from the practice of law in the province. If to everyone's surprise Macnemara had submitted to Hart, the "humble Representation" would have provided an alternative excuse for demanding a law disbarring him.

The four provincial justices — William Holland, Samuel Young, Thomas Addison, and Richard Tilghman<sup>66</sup> — had nothing good to say about Macnemara. He was "a Person of such a Turbulent, Refractory Haughty & Abusive temper" that it was "his comon Practice (when his Circumstances would any wise support him) to

despise Affront & contemn the Authority of the Justices” of the courts before which he appeared, and especially the justices of the provincial court.

Earlier Macnemara had been suspended from his practice, but on his humble petition, in which he acknowledged his offenses and solemnly promised to behave himself in the future, he was restored to his practice.<sup>67</sup> In spite of that submission, however, he “Repeated his Insolent & Contemptuous behaviour by upbraiding” William Holland, the chief justice of the provincial court, for partiality. More than that, he had dared the provincial justices to give judgment “Contrary to his Sentiments.”

Macnemara had been especially obnoxious at a special court of oyer and terminer and jail delivery in Annapolis on 10 July 1716,<sup>68</sup> where certain delinquents were tried for firing the great guns of Annapolis on 10 June 1716, the Pretender’s birthnight.<sup>69</sup> There, “in the Face of the whole Court and in Order to run down and Decry the Jurisdiction thereof and to Intimidate the Judges,” who had improperly denied the allowance of a writ of *certiorari* to remove the case to the provincial court, Macnemara “Audaciously and with an Insulting Air” threatened the justices by saying “let me see who dares try them by this Comission.”<sup>70</sup>

Not only was Macnemara contemptuous of authority, but he was also able to escape the consequences of his lawlessness. Revealing something less than a judicious temperament and making it clear that they had no confidence in the romantic notion that a person is innocent until he is proven guilty, the four provincial justices pointed out that although the whole course of Macnemara’s life had been so turbulent and disorderly that for many years he had “very rarely been Clear of some Criminall Prosecution or other in the Provinciall Court,” his ability as a lawyer usually enabled him to escape punishment. Although he had been convicted of some of the charges



against him, his artful and audacious management “of the Subtile and Tricking Part of the Law” had enabled him to gain acquittals “from many more which with as much Justice he Deserved Punishment for.”<sup>71</sup>

In “many more Instances too tedious to Insert,” Macnemara had “Behaved himself with Insolence and Contempt,” but the justices, after some resentments, had ignored them in the hope that he would reform. Such was his intolerable pride and insolence, however, that he recently had “not scrupled to Insult and affront” John Hart both as governor and as Keeper of the Great Seal. For those offenses Macnemara was awaiting trial on two indictments in the provincial court,<sup>72</sup> and Hart had suspended him from his practice in the chancery court. Baltimore and Guilford had been impartial judges of that suspension.<sup>73</sup>

Supporting Hart in his broad interpretation of their Lordships’ letter, the four provincial justices concluded that since Baltimore’s and Guilford’s determination and commands had no effect on Macnemara’s proud and turbulent spirit, they despaired of being able to enforce the laws for the punishment of vice and for “the maintenance of Virtue and Justice without being the mark of his scorn & Revenge.” Rather than subject themselves to that scorn and revenge, they were firmly resolved no longer to continue as provincial justices if so turbulent and insolent a person was allowed to continue to practice before them.<sup>74</sup>

Although the four provincial justices did not present much specific evidence against Macnemara, two days later, with the provincial justices still in the majority<sup>75</sup> and just after resolving that Macnemara as naval officer of Patuxent had taken exorbitant fees from Captain David Pulsifer,<sup>76</sup> the upper house sent the delegates a report of Macnemara’s interview with Hart and suggested that they bring in a bill to disable him from the practice of law in the province.

Never tiring of belaboring Macnemara's alleged transgressions, the members of the upper house recited some of them. After reviewing the exchange between Macnemara and Hart two days earlier, they noted that Hart considered Macnemara's refusal to apply to him for forgiveness and reinstatement as an attorney in the chancery court after he received the letter from Baltimore and Guilford "a further Confirmation of his Obstinacy and Contumaciousness." Macnemara had made "no offers of his Submission on the Order of his Suspension [*sic*] in the Chancery Court" even though Baltimore and Guilford had approved that suspension.

Relying on the humble representation of the four provincial justices, the members of the upper house —with the four provincial justices still in the majority<sup>77</sup> — pointed out that not only had Macnemara affronted Hart as governor and chancellor, as would appear by two indictments found against him in the provincial court — just as though an indictment was the equivalent of a conviction —, but he had also tried to get Hart removed as the governor of the province. He had even had the confidence to tell Hart to his face in the chancery court that he had tried to the utmost of his power to get him removed.

Referring to the allegations in one of the indictments against Macnemara, the members of the upper house complained that he had insulted both Hart and his council by "comparing them and their . . . [proceedings] to the Spanish Inquisition." Beyond that, he had treated the provincial court and the other courts of the province with contempt and indignity. Specifically at the special court of oyer and terminer for the trial of the men who were arrested for firing the great guns of Annapolis "on the Birth night of the Pretender He said lett me see who dare try them by this Commission or words to that Purpose" after the justices refused to remove the trial to the provincial court on a writ of *certiorari*.

In justice to Hart's "Character and for Encouragement and Support of the magistrates in the Distribution of Justice" the members of the upper house thought themselves obliged to declare Macnemara "a Contemner of Authority And a Disturber of the Peace & Tranquility of the Good People" of the province, and they earnestly recommended that the delegates consider whether it might not be advisable to disable him from practicing law either by bringing in a bill or in some other way that the delegates in their discretion might consider proper to prevent his committing similar enormities in the future. They added that they were sending along several papers relating to Macnemara's offenses, and they hoped that the papers would give the delegates full satisfaction on the issue.<sup>78</sup>

Thus the members of the upper house reveal what they must have had in mind all along. From the beginning of the session they had intended to ban Macnemara from the practice of law; the four provincial justices had their statement ready when the upper house, with themselves in the majority, asked them for it; and the upper house, with the four provincial justices still in the majority, could proceed with little delay to the recommendation that the delegates bring in a bill for the disbarment.

Hart and the members of the upper house got exactly what they wanted. Immediately on reading the message and the accompanying papers from the upper house, the delegates decided that the "Message and the severall Papers . . . fully informed" them of Macnemara's insolence and therefore immediately and unanimously resolved to bring in a bill to disable him from practicing law in the province after he completed the cases that he already had in progress.<sup>79</sup>

Nearing the end of the session, the assembly once again moved fast. The upper house recommended the bill on the afternoon of Wednesday, 7 May,<sup>80</sup> the lower

house immediately and unanimously decided to bring in the bill;<sup>81</sup> on Friday morning the Committee of Laws delivered the bill to the lower house and the delegates read it twice by special order, passed it unanimously, and sent it to the upper house;<sup>82</sup> as soon as it received the bill the upper house passed it with four very minor amendments and sent it back to the lower house;<sup>83</sup> immediately on receiving the amended bill the lower house accepted the amendments, passed the bill for engrossing, sent it to the Committee of Laws to be engrossed,<sup>84</sup> and passed the engrossed bill that same afternoon after doing only three other pieces of business and sent it back to the upper house.<sup>85</sup> The upper house passed the bill and sent Colonel Samuel Young, one of the provincial justices who had written up the humble representation against Macnemara, to the lower house to inform the delegates of its action.<sup>86</sup>

The entire process had taken only about forty-eight hours, and the assembly completed all of the action on the bill on the same day on which the Committee of Laws brought it in.<sup>87</sup> Sometime during that hectic Friday Macnemara petitioned the lower house to appear to defend himself, but the delegates ignored the petition, and after Hart prorogued the assembly the clerk of the lower house returned the petition to Macnemara “without any Answer.”<sup>88</sup> For not giving Macnemara a hearing both houses used the excuse that Macnemara had not applied for the hearing until after both houses had passed the bill in its final reading,<sup>89</sup> but later the delegates admitted that they would not have granted him a hearing in any case.<sup>90</sup>

Apparently nobody bothered to point out that considering the speed with which the assembly acted, no one in that august body should have been surprised that Macnemara could not enter his petition any earlier in the process.

The next day, the last day of the session, Hart signed and sealed the bill.<sup>91</sup>

The title of the act against Macnemara — “An Act for the better Supporting the Magistrates in the Administration of Justice within this Province, and for the Disabling [of] Thomas Macnemara, Esq; to Practice Law therein”<sup>92</sup> — might make it appear that it was directed not against Macnemara alone but against all ill-behaved attorneys and that Macnemara was only something of an after-thought. Since all except fourteen of the ninety-two lines of the printed act are devoted strictly to Macnemara, however, the members of the assembly obviously did have him primarily in mind. And in their message to Baltimore and Guilford at the end of the session they refer to the act as one to disable Macnemara from the practice of law and say nothing about the behavior of anyone else.<sup>93</sup> Baltimore and Guilford, and everybody else, must have known exactly what Hart and the assembly were up to.

The assembly introduced the act with a long attack on Macnemara in which it repeated much of what the provincial justices and the other members of the upper house had already said. Macnemara had been “sundry times suspended” from the practice of law for his misdeeds in Maryland as well as in Pennsylvania, but he had been readmitted to his practice in Maryland “on his fair Promises of Amendments.” Because after “a late suspension from his Practice he [had] obtained Her late Majesty’s Order to be restored to it again,”<sup>94</sup> he had often suggested that the law by which the assembly gave the courts the right to suspend attorneys from practicing before them<sup>95</sup> did not apply to him. As a result, not only had the power of the justices to suspend attorneys become dubious, but also Macnemara had used the queen’s order to justify his indecency toward the justices when he pleaded before them “and even to despise their Authority, and Affront their Persons.”

The justices had been cautious about punishing Macnemara, however, partly because of his frequent claim that his influence in England was far superior to theirs,

partly because of his “Threatning, Litigious and Revengeful Temper,” and partly because of his “Method of Practising upon many unthinking People, to suprise [*sic*] them into Certificates and Affidavits in his Favour, the better to gain his Points of those that thwart him.”

Through his claim to influence in England, his vengefulness, and his manipulation of people, Macnemara had “at Length arrived to so Intollerable a Degree of Pride and Arrogancy” that he had attacked even Governor Hart himself “in his Character and Government” for warning Maurice Birchfield, the Crown’s surveyor general of customs, against appointing him to the collectorship at Patuxent because he was “a Person of suspected Character and Principle.”

Macnemara’s apparent conversion from Catholicism to the Church of England was an illustration of that suspected character and principle. He had come to Maryland as a high Papist,<sup>96</sup> but since then he claimed to be a member of the Church of England without any other motives that the members of the assembly had ever heard of except those that would benefit him in his practice and to have the opportunity to serve the Popish faction whenever he could, as he had frequently done.

Particularly Macnemara had served the Popish faction when he defended some of them when they were tried at a special court of oyer and terminer for drinking the Pretender’s health, for “audaciously Cursing His sacred Majesty, King George,” and for firing the guns of Annapolis on the supposed birthday<sup>97</sup> of the Pretender. Not only did he serve as their counsel, but he “so warmly espoused their Cause, as even to dare that Court to proceed against them.”<sup>98</sup>

Macnemara’s insolence had increased greatly since Maurice Birchfield had employed him to prosecute the suits of the Crown.<sup>99</sup> He had publicly affronted Hart in the execution of his office as governor and chancellor, and although Baltimore and

Guilford had required him to make a reasonable submission for his offense he had willfully refused to make the submission even though Hart “was pleased to give him, with great Tenderness, a handsome Opportunity” to do it. That refusal provided sufficient testimony to Macnemara’s “continued Resolution to persist in the Justification of his ill Conduct,” which made several of the most respected magistrates so uneasy that they had declared their intention to resign if “so Turbulent and Insolent a Person . . . [was] allowed to practice before them.”

Of some of these and the many other misdeeds that were too tedious to enumerate Macnemara had been convicted, but of others he had been acquitted by his management of juries and his subtlety in the law.

Macnemara’s insolencies were so haughty and so daring that the honor of the government could not be supported, the magistrates could not “be safe and easy in the Execution of Justice,” and the peace of the province could not be preserved unless authority could provide some remedy to discourage not only Macnemara but also anyone else who behaved himself as badly in court as Macnemara did.

Finally finished with Macnemara’s alleged misdeeds, the assembly got to the substantive provisions of the law. It provided that all magistrates should strictly observe the behavior of all attorneys as well as others who appeared before them and should discountenance any indecent liberties that would decrease the grandeur of the court by punishing anyone who engaged in such conduct with suspension or a fine at their discretion but not to exceed one thousand pounds of tobacco for any one offense. Justices who failed to enforce appropriate conduct in their courts would risk censure by the assembly for neglecting their duty by allowing the proprietor’s authority to be trampled on and for sacrificing its dignity.

While the serious enforcement of these provisions might have improved the

behavior of everybody who appeared in court, clearly the primary purpose of Hart and the assembly was to deprive Macnemara of his practice, and now the assembly could get to that. It provided that “for his continued ill Practices” Macnemara was disabled “from practising the Law as Council, Attorney, Sollicitor, or otherwise” in any court in the province except to finish, provided he behaved himself decently, any cases in which he was already serving as attorney.

At this point the assembly in its anxiety to disbar Macnemara included language that provided the opposite of what it intended. As the assembly’s message to Baltimore and Guilford at the end of the session makes clear,<sup>100</sup> it intended that Macnemara could continue to represent the Crown in its suits in the chancery court — denying the Crown the right to sue in the chancery court with an attorney of its own choice would have been a challenge to the Crown for which the ruling elite of the province was not ready —, but instead it ruled that Macnemara could not practice in the chancery court in *any* case, even in those cases that he already had in progress there. The assembly disbarred Macnemara in all of the courts of the province,

Saving to the said Macnemara a Liberty to Finish all such Actions as are now depending, wherein it appears by Record he is actually concerned for any Person or Persons, on behaving himself decently, *except in the Chancery Court, wherein he has been already Suspended in all Cases, save those that relate to the Crown.*<sup>101</sup>

Thus the words “wherein he has been already Suspended in all Cases, save those that relate to the Crown” were irrelevant: the assembly had already said that Macnemara could finish the cases that he had pending “Except in the Chancery Court.” To one of the English lawyers who reviewed the act for Macnemara, that meant that he could not practice in the chancery court at all.<sup>102</sup>



The “handsome Opportunity” that the members of the assembly insisted that Hart had given Macnemara to make a reasonable submission was actually not all that handsome. Hart had seen to that by refusing to suggest the terms of Macnemara’s submission, thus violating his instructions from Baltimore and Guilford.

In their letter to Hart, Baltimore and Guilford required Macnemara to make “a Due Submission” to Hart “in such Terms and manner” as Hart with the advice of his council thought proper,<sup>103</sup> and in their letter to Macnemara they required him “to make a due Submission in Court . . . in such Terms and manner” as Hart might prescribe.<sup>104</sup> Instead of suggesting the “Terms and manner” of Macnemara’s submission, however, Hart left the initiative to Macnemara, and Macnemara refused to take it. Instead he reminded Hart that Hart was supposed “to make Proposals” to him. Hart refused, and since Hart was the one who had the power Macnemara was the one who was obstinate.<sup>105</sup>

Having accomplished their important objectives during this session — the revoking of the Catholics’ right to vote and the right of Catholic priests to hold services in Catholic families and the disbarring of Thomas Macnemara —, the members of the assembly could be quite pleased with themselves, but they were also uneasy enough to tell Baltimore and Guilford less than the whole story.

In their short response at the end of the session to their Lordships’ letter of 4 February 1717/18 to them as members of the council, the members of the upper house did not mention Hart’s refusal to follow his instructions but rather told their Lordships only that their “favourable Opinion of the Sincerity” of the members of the council in their proceedings regarding Macnemara’s suspension from his practice in chancery obliged them to acknowledge their most grateful appreciation<sup>106</sup> of the

honor that Baltimore and Guilford did them by agreeing with them on the suspension. They considered themselves obliged to assure Baltimore and Guilford that in any emergency in which their advice was required they would give their advice sincerely and in such a manner as they considered most conducive toward protecting Baltimore's "Just Rights And to Advancing the Prosperity" of the province. They promised themselves that Baltimore and Guilford would "never be Wanting to approve and Encourage" their endeavors.<sup>107</sup>

Probably the address of the upper house could be short because a long joint address to their Lordships had already been prepared. Realizing how controversial the proceedings of the session might be and clearly a little nervous, two days before the end of the session — on 8 May — the members of the upper house told the delegates that they thought that it would be very expedient that the transactions of the session be set before their Lordships in a true light and suggested a joint message to them. If the delegates agreed they should appoint some of themselves to join some of the members of the upper house in a conference committee.<sup>108</sup>

The joint address that came out of the committee, which both houses approved on the last day of the session,<sup>109</sup> was a long whitewash of Hart and the assembly and an attack on the Catholics and Macnemara. After a long effort to justify their actions against the Catholics the members of the assembly explicitly connected Macnemara with them. Seeing that the Roman Catholics were the open and professed friends of the party that kicked against the government and that Thomas Macnemara had "never Offered himself to make any Such Submission" as their Lordships required of him, in spite of their Lordships' "Very kind tho fruitless Endeavours to bring him to a knowledge of himself" and to cause him to make "such Just Submissions as might for the time to Come preserve" Baltimore's authority and the dignity and jurisdiction

of the courts of the province against “the Contempts and Insults of any Audacious persons that Affront[ed]” them, and believing that Macnemara was supported as well as encouraged by the “Romish party,” the two houses, being determined to enact “such measures as might most Effectually procure the peace” of the province and discourage the enemies of the present establishment, decided to repeal the act to prevent the growth of popery in the province, thus leaving the Papists in the same condition as they were in before the assembly passed that act in 1704.

It was also their duty, the members of the assembly continued after a further attack on the Catholics, to inform their Lordships of their true reasons for depriving Macnemara of his practice except in cases in which he was representing the Crown. They believed that their Lordships, whom he had already caused too much trouble, had expected to settle the issue by requiring Macnemara to make such a reasonable submission as Governor Hart and his council would approve. Such was Macnemara’s unhappy temper, however, that neither persuasions nor reproofs could have any influence on his stubborn spirit, as Baltimore and Guilford would be able to judge for themselves by the record of his behavior before the upper house and the representation of the justices of the provincial court, both of which “with other matters relating unto his Insolent behaviour” were entered in the journals of the assembly. The members of the assembly believed that passing the act against Macnemara was “the most Effectual means to prevent the like Abuses and Indignities” in the future.

Thus the assembly had provided their Lordships with “the true State of the most Publick Transactions” of their session. It had been careful to proceed in such a way as to give their Lordships no reason to suspect that the good people of the province had any other object than “the Honour Dignity and true Interest of the Noble Family

of Baltimore” and the prosperity of the province “under a Protestant Establishm<sup>t</sup> Secured by such good and Wholsome [*sic*] Laws” as would protect it against “all the Endeavours of . . . [its] Secret and professed Enemies.”

After a long complaint against Maurice Birchfield, in which they blamed Macnemara’s “Avaritious & Litigious Temper” and his desire to increase his fees for Birchfield’s “most Oppressive and rigorous proceedings” against a great number of the inhabitants of the province,<sup>110</sup> the assembly got back to the Catholics. It begged leave to assure their Lordships that nothing that it had done during this session was designed to cause the Papists to be persecuted. In spite of the assembly’s denying them the right to vote and reinstating the harsh English law against them, the Catholics could still “Enjoy the Same Indulgence they formerly had by the Connivance” of the government as long as they behaved themselves peaceably and without offence.

Finally, the members of the assembly hoped that their Lordships would not allow any sinister representations based on fears rather than facts to influence their attitude toward Baltimore’s faithful Protestant tenants of Maryland.<sup>111</sup>

Thus Macnemara’s career in Maryland was inextricably bound up with the Protestants’ fear and hatred of the Catholics. While there was little or no chance that the Catholics would ever manage to take over the province, Macnemara’s election as a common-councilman, alderman, and mayor of Annapolis and the Catholics’ effort to elect someone unacceptable to replace Benjamin Tasker as a delegate from Annapolis might have convinced some Protestants that there was a real danger.<sup>112</sup> Macnemara might become the sort of charismatic leader of the Catholics that the Protestants were unable to find against the Catholics in the 1670’s.<sup>113</sup> As the mem-

bers of the assembly made clear, weakening the Catholics was designed also to weaken Macnemara, and if depriving him of his livelihood by depriving him of the right to practice law in the province caused him to leave the province the Catholics would lose a potential leader.

Whether Macnemara left or stayed, disbarring him would deny the Catholics the professional skill of an alleged champion, while reinstating the harsh English law against Catholics — which would always be a threat even though the assembly promised not to enforce it as long as the Catholics behaved themselves properly<sup>114</sup> — would discourage proselytizing and politicking by the unholy group that supported and encouraged him.

Finally, denying Catholics the right to vote would destroy their political power in any case. If Catholics had not had the right to vote, Macnemara might never have been elected to his offices in Annapolis to begin with.

*Chapter 11*  
*Disbarred Again, 1718*

<sup>1</sup> The lower house met briefly on 22 April, but the session did not actually begin until the next day. *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXXIII, 119, 201.

<sup>2</sup> See Chapter 7, “Respectability, 1713-1719,” at Notes 37-40; Chapter 10, “John Hart’s Vendetta, 1716-1719,” at Notes 7-8.

<sup>3</sup> *Md. Arch.*, XXXIII, 119-123, 202-206.

<sup>4</sup> *Ibid.*, pp. 119-120, 120, 202, 202-203.

<sup>5</sup> *Ibid.*, pp. 482, 571.

<sup>6</sup> *Ibid.*, pp. 121, 204.

<sup>7</sup> Charles Carroll returned from England soon after 10 June 1716 (*Md. Arch.*, XXXIII, 481, 569), while Macnemara did not leave for England until sometime after 11 October 1716, the day on which he allegedly said that Hart and his council acted like the Spanish Inquisition when they inquired into his “Character Principles in Religion [and] Loyalty [to] and Affection” for King George and his family. Provincial Court Judgment Record, Liber P. L., No. 4, pp. 83-84; Chapter 7, “Respectability, 1713-1719,” at Notes 54-55; Chapter 9, “Harassment by Indictment, 1712-1719,” at Note 57.

Ronald Hoffman says nothing about Carroll’s going to England as an emissary

of the Catholics. Ronald Hoffman, “‘Marylando-Hibernus’: Charles Carroll the Settler,” *The William and Mary Quarterly*, Third Series, XLV, No. 2 (April 1988), p. 229; Ronald Hoffman, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1599-1782* (Chapel Hill: The University of North Carolina Press, 2000), pp. 82-83.

<sup>8</sup> *Md. Arch.*, XXXIII, 123, 205-206.

<sup>9</sup> *Ibid.*, pp. 53-54; Donnell M. Owings, *His Lordship’s Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 138.

<sup>10</sup> *Md. Arch.*, XXXIII, 208-209, 209.

<sup>11</sup> The quote is from John Hart (*ibid.*, pp. 125-126) rather than from the indictment.

<sup>12</sup> The record of the upper house in *ibid.*, p. 126, says “for John Brannock,” but see the printed indictment in *ibid.*, XXXVI, 533-534.

<sup>13</sup> For these three indictments, including the definitions of *supersedeas* and *replevin*, see Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 89-94, 95-97, 104-106. The first two of these indictments are printed after the act of 1719 against Macnemara (*Md. Arch.*, XXXVI, 530-532, 533-534), and the indictment for allegedly comparing Hart and his council to the Spanish Inquisition is written out in Provincial Court Judgment Record, Liber P. L., No. 4, pp. 83-84.

<sup>14</sup> *Md. Arch.*, XXXIII, 125-126.

<sup>15</sup> Provincial Court Judgment Record, Liber W. G., No. 1, p. 31.

<sup>16</sup> *Ibid.*, Liber P. L., No. 4, pp. 83-84.

<sup>17</sup> *Md. Arch.*, XXXIII, 125-126, 127, 210.

<sup>18</sup> *Ibid.*, pp. 127-130, 210; Chancery Record 3, pp. 397-401, 413-414. For these incidents, see Chapter 10, “John Hart’s Vendetta, 1716-1719,” after Note 40-44.

<sup>19</sup> *Md. Arch.*, XXXIII, 126-127, 210. The act is 1707, c. 6, *Md. Arch.*, XXVII, 146-148. The opinions of these lawyers apparently have not survived.

<sup>20</sup> But no doubt Macnemara was one of the people the members of the upper house had in mind when they referred to “the Interest of Papists and their Adherents.” *Md. Arch.*, XXXIII, 131.

<sup>21</sup> *Ibid.*, pp. 131-132.

<sup>22</sup> Baltimore and Guilford to John Hart, 4 February 1717/18, *Md. Arch.*, XXXIII, 134-135; Baltimore and Guilford to Council, 4 February 1717/18, *ibid.*, p. 135. The actual record of the council’s support of Macnemara’s suspension has not survived, since there are no records of the council after 11 January 1716/17 until 10 September 1719. *Md. Arch.*, XXV, 343, 352.

I consider Baltimore’s and Guilford’s reference to these proceedings and the council’s letter later in the Text at Notes 51-78.

<sup>23</sup> *Ibid.*, XXXIII, 141-142, 220. For this message, see Text below at Notes 38-40.

<sup>24</sup> When the delegates received the papers on the twenty-fifth they referred consideration of them to the next day, a Saturday (*ibid.*, p. 210), but on Saturday they did not get to them. *Ibid.*, pp. 211-213.

<sup>25</sup> 1715, c. 48, *Md. Arch.*, XXX, 248-252. An earlier act is 1708, c. 8, *Md. Arch.*, XXVII, 360-362, continued by 1712, c. 18, *Md. Arch.*, XXXVIII, 160.

<sup>26</sup> County justices held at least twenty-one of the fifty seats in the lower house during the session of April and May of 1718. Because the court records for Calvert County and St. Mary’s County have not survived, and because the court records for Dorchester County have not survived for this period, the list probably underestimates the number of delegates who were also justices.



Delegates to the lower house in 1718 who were also county justices:

Anne Arundel County	
Richard Warfield	Non-quorum justice (?) <sup>a</sup>
Baltimore County	
James Maxwell	Chief Justice
Richard Colegate	Probably quorum justice Third of ten
Francis Dallahide	Probably quorum justice Fourth of ten
Calvert County	
	None
Cecil County	
Matthias Vanderheyden <sup>b</sup>	Quorum justice
John Ward	Non-quorum justice
Ephraim Augustine Herman	Non-quorum justice
Charles County	
John Fendall	Non-quorum justice
Dorchester County	
	None
Kent County	
Nathaniel Hynson	Chief Justice
Edward Scott	Quorum justice
Prince George's County	
James Stoddert	Chief Justice
John Bradford	Non-quorum justice
Queen Anne's County	
Charles Wright	Non-quorum justice
Somerset County	
Samuel Hopkins	Quorum justice
John Purnell <sup>c</sup>	Non-quorum (?) justice
William Whittington	Non-quorum justice

## St. Mary's County

Henry Peregrine Jowles	Quorum (?) justice
Thomas Truman Greenfield	Non-quorum justice

## Talbot County

Matthew Tilghman Ward	Chief Justice	Speaker
Thomas Robins	Quorum justice	
James Lloyd	Quorum justice	
Thomas Emerson	Quorum justice	

<sup>a</sup> Papenfuse, Day, Jordan, and Stiverson (cited in full below) have Richard Warfield as a justice of Anne Arundel County from 1712 to 1723, but he is not included in the Anne Arundel County commissions of 11 November 1715, 15 February 1715/16, 29 September 1716, or 12 November 1717. He is included as a quorum justice in the commission of 7 June 1718, after the session of the assembly had ended. Anne Arundel County Court Judgment Record, Liber V. D., No. 1, pp. 185-188, 193-196, 400-403; Liber R. C., pp. 135-137, 198-200.

<sup>b</sup> Matthias Vanderheyden was a delegate from Cecil County, and Matthew Vanderheyden was a quorum justice of the county court. They were the same person.

<sup>c</sup> John Purnell was excused from this session. *Md. Arch.*, XXIX, 238; XXXIII, 207.

## Sources:

Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, eds., *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 42, and appropriate biographies.

Anne Arundel County Court Judgment Record, Liber V. D., No. 1, pp. 185-188, 193-196, 400-403; Liber R. C., pp. 135-137, 198-200;

Baltimore County Court Proceedings, Liber I. S., No. A, p. 122;  
 Cecil County Land Record, Liber J. D., No. 3, pp. 13-17, 17-18;  
 Charles County Court Record, Liber E, No. 2, pp. 466-467;  
 Kent County Court Proceedings, Liber J. S., No. X, pp. 60-63;  
*Md. Arch.*, XXVII, 495; XXIX, 238;  
 Prince George's County Land Records, Liber D, pp. 316a-317a;  
 Queen Anne's County Court Judgment Record, Liber E. T., No. B, pp. 482-484;  
 Talbot County Court Judgment Record, Liber F. T., No. 1, pp. 141-142.

No recent commission is available for Somerset County, but we get John Purnell's appointment, on 10 November 1713, from *Md. Arch.*, XXIX, 238. The latest commission for Somerset County that I have before the one of 17 April 1723 is the one of 25 May 1704. Somerset County Land Records, Liber O-8, pp. 129-130 from back; Somerset County Judicial Record, 1722-1724, pp. 17-18.

<sup>27</sup> *Md. Arch.*, XXXIII, 135-139, 214-218.

<sup>28</sup> *Ibid.*, pp. 134-135, 169-170.

<sup>29</sup> *Ibid.*, p. 135. Apparently this letter of the council to their Lordships has not survived.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*, pp. 197, 285. I consider this letter later in this chapter, at Notes 108-111.

<sup>32</sup> *Ibid.*, pp. 49, 197.

<sup>33</sup> *Ibid.*, p. 135.

<sup>34</sup> *Ibid.*, p. 169.

<sup>35</sup> *Ibid.*, pp. 169, 170-171.

<sup>36</sup> See Chapter 10, “John Hart’s Vendetta, 1716-1719,” at Notes 30-35.

<sup>37</sup> *Md. Arch.*, XXXIII, 170-171.

<sup>38</sup> The five members of Hart’s council — and therefore of the upper house — who were also justices of the provincial court during the session of April and May 1718 were William Holland, Samuel Young, Thomas Addison, Richard Tilghman, and Thomas Smith. Provincial Court Judgment Record, Liber V. D., No. 2, pp. 129-130; *Biographical Dictionary*, I, 42. Thomas Smith did not attend the meetings of the upper house after 3 May 1718. *Md. Arch.*, XXXIII, 158, 163, 166, and Index.

<sup>39</sup> *Md. Arch.*, XXXIII, 141-142, 220.

<sup>40</sup> *Ibid.*, pp. 142-144. For more on the transcripts from Pennsylvania, see Chapter 3, “Early Troubles, 1703-1710,” at Notes 211-213.

<sup>41</sup> *Md. Arch.*, XXXIII, 151, 225-226.

<sup>42</sup> *Ibid.*, p. 206.

<sup>43</sup> For the form of a writ of election, which specifies that a sheriff cannot be a delegate, see 1716, c. 11, *Md. Arch.*, XXX, 618-619.

<sup>44</sup> *Md. Arch.*, XXXIII, 141, 144-145, 149, 150, 206, 211, 219, 221, 222, 224.

<sup>45</sup> *Ibid.*, p. 219.

<sup>46</sup> *Ibid.*, pp. 152, 158, 196, 223, 226, 227, 228, 233, 283; 1718, c. 4, *Md. Arch.*, XXXIII, 289.

<sup>47</sup> See Chapter 7, “Respectability, 1713-1719,” at Notes 96-107.

<sup>48</sup> *Md. Arch.*, XXXIII, 126.

<sup>49</sup> *Ibid.*, pp. 127-130; Chancery Record 3, pp. 397-401, 414. See also Chapter 10, “John Hart’s Vendetta, 1716-1719,” after Note 40-44.

<sup>50</sup> *Md. Arch.*, XXXIII, 126, 127, 210.

<sup>51</sup> *Ibid.*, p. 168.

<sup>52</sup> *Ibid.*, p. 170.

<sup>53</sup> *Ibid.*, pp. 134, 169.

<sup>54</sup> *Ibid.*, pp. 168-169.

<sup>55</sup> *Ibid.*, XL, 199-200, 205-206, 206-207, 315, 346; C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), pp. 152-153.

<sup>56</sup> On 28 May 1692 two Irishmen, Hugh Hamleton and Robert Cooper, had to beg pardon on their knees before the lower house for singing “a Treasonable Song” and then had to do the same thing before the upper house. The delegates did not order them whipped because this was their first offense. Arthur Delahay, another Irishman, was so lame that the officer who brought the others before the two houses could not bring him in. *Md. Arch.*, XIII, 395, 398-399.

On 12 May 1696 Richard Clarke had to beg the pardon of the lower house on his knees. *Ibid.*, XIX, 368. On 4 November 1712 James Presbury, the sheriff of Baltimore County, had to beg the pardon of the lower house on his knees for “Partiality and Neglect of his Duty in the Election of Members for that County.” *Ibid.*, XXIX, 144-145. On 8 August 1716 Dominick Martin had to beg the pardon of the upper house on his knees for his contempt of an order of the house. *Ibid.*, XXX, 461.

<sup>57</sup> *Md. Arch.*, XXXIII, 169. Hart’s instructions were vague enough that probably he had little trouble justifying his treatment of Macnemara. He could argue that “such Terms and manner as you by the Advice of our Council shall think Proper,” the words in Baltimore’s and Guilford’s letter to him (*ibid.*, pp. 134, 169), meant that he could force Macnemara to take the initiative, just as did “in such Terms and manner as the Keeper of our Great Seale of the Province shall Prescribe,” the words in their Lordships’ letter to Macnemara. *Ibid.*, p. 170. Hart did not contradict Macnemara,

however, when Macnemara told him “I have nothing to Offer, but their . . . [Lordships] lets [*sic*] me know that your Excy was to make Proposals to me.” *Ibid.*, p. 169.

<sup>58</sup> I deal with this “humble representation” immediately below.

<sup>59</sup> *Md. Arch.*, XXXIII, 169-170.

<sup>60</sup> *Ibid.*, pp. 134-135. Thus Hart’s letter from Baltimore and Guilford is written out twice in the records of the upper house.

<sup>61</sup> *Ibid.*, pp. 170-171.

<sup>62</sup> *Ibid.*, p. 171.

<sup>63</sup> *Ibid.*, pp. 181-182, 258-259.

<sup>64</sup> William Holland, Samuel Young, Thomas Addison, and Richard Tilghman were provincial justices, and the other three members of the upper house sitting that day were Philemon Lloyd, Henry Lowe, and John Hall. *Ibid.*, pp. 166, 167. The remaining members of the upper house were Thomas Brooke, Edward Lloyd, Thomas Ennalls, and Thomas Smith. *Biographical Dictionary*, I, 42.

<sup>65</sup> *Md. Arch.*, XXXIII, 171-172.

<sup>66</sup> By a commission of 13 September 1716 William Holland was chief justice of the provincial court, Thomas Smith and Samuel Young were members of the quorum, and Thomas Addison, Richard Tilghman, James Harris, and James Stoddart were the non-quorum justices. Provincial Court Judgment Record, Liber V. D., No. 2, pp. 129-130.

Thomas Smith, the fifth provincial justice who was a member of the council and the upper house, was not present in the upper house when the four provincial justices presented their “humble Representation” and did not join in it. *Md. Arch.*, XXXIII, 166, 167. James Harris and James Stoddart, the remaining two justices of

the provincial court, were not members of the council and the upper house.

Of the four provincial justices who joined in the humble representation, only William Holland was sitting on the provincial court in July of 1710, when the rail-roading of Macnemara in the death of Thomas Graham occurred. *Md. Arch.*, XXV, 226; Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231, 383; Thomas Smith was also a provincial justice at that time. *Md. Arch.*, XXV, 226; Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231, 383.

<sup>67</sup> Actually Macnemara had been suspended from the practice of law in Maryland three times: on 30 September 1707, four months after he successfully defended Joseph Hill on the charge of misprision of treason and the day on which Hill was supposed to have a new trial; in October of 1710 or shortly after, after he and John Mitchell were convicted of chance-medley in the death of Thomas Graham; and on 3 June 1712, after he was indicted for allegedly assaulting and attempting to bugger Benjamin Allen. See Chapter 3, "Early Troubles, 1703-1710," at Notes 43-51; Chapter 5, "Railroading, 1710-1713," at Notes 68-71, 112.

Which suspension the four provincial justices were referring to here is unclear, but it must have been either the first or the third, since the queen ordered Macnemara's reinstatement on the second occasion.

<sup>68</sup> Neither the provincial justices here nor the members of the upper house in their report to the delegates (*Md. Arch.*, XXXIII, 181, 259) nor the assembly in its two acts against Macnemara (1718, c. 16, *Md. Arch.*, XXXVI, 526; 1719, c. 17, *Md. Arch.*, XXXVI, 529) reveal the date or the place of this special court of oyer and terminer, but the special court must have been held in Annapolis on 10 July 1716. See Chapter 1, "Character," Note 15.

<sup>69</sup> *Md. Arch.*, XXX, 372-374; XXXIII, 480-481. For the firing of the guns, see

Chapter 7, “Respectability, 1713-1719,” at Notes 34-36, 173-175.

<sup>70</sup> By refusing to allow the writ of *certiorari* the justices of oyer and terminer were acting improperly, since if a superior court granted a *certiorari* the inferior court was supposed to honor it. Henry Campbell Black, *Black’s Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), pp. 228, 1609; Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4 vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), IV, 320-321; Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 204-205.

Since the attorney got a writ directly from the clerk of the court out of which it was sued, Macnemara probably got the writ of *certiorari* from the clerk of the provincial court without any of the provincial justices having anything to say about it. For evidence that the attorney got writs directly from the clerk of the court, see 1716, c. 20, *Md. Arch.*, XXX, 624-625; 1753, c. 22, *Md. Arch.*, L, 349; 1763, c. 18, *Md. Arch.*, LVIII, 475.

It is impossible to know who sat on the special court of oyer and terminer, but it is possible that it included one or several of the provincial justices, possibly with some of the justices of Anne Arundel County. For special courts of oyer and terminer and jail delivery, see Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 114-118.

<sup>71</sup> For Macnemara’s earlier troubles, see Chapter 3, “Early Troubles, 1703-1710,” Chapter 5, “Railroading, 1710-1713,” and Chapter 9, “Harassment by Indictment, 1712-1719.”

<sup>72</sup> The two indictments on which Macnemara was awaiting trial in the provincial court were the one in which the grand jury at the provincial court for September



of 1717 charged him with saying on 13 July 1717 that he would like to see the man — Hart — who dared to grant the *supersedeas* in Andrew Dalrymple's case and with threatening on 13 August 1717 to have Hart arrested, and the indictment in which the grand jury at the provincial court for April of 1718 charged him with saying on 11 October 1716 that Hart and his council acted like the Spanish Inquisition.

Actually in May of 1718 there was a third indictment outstanding against Macnemara. This is the one in which the grand jury at the provincial court for September of 1717 charged that on 30 September 1716 Macnemara had taken excessive fees from John Brannock.

Again, the indictment in which the grand jurors charged that Macnemara compared Hart and his council to the Spanish Inquisition the provincial justices at their court for July of 1718 discharged "in Obedience to" the king's "Act of free Grace," since the alleged offense had occurred before 1 May 1717, and the other two indictments were never tried.

For all of these indictments, see Chapter 9, "Harassment by Indictment, 1712-1719," at Notes 89-94, 95-97, 103-106.

<sup>73</sup> The provincial justices must have written the representation sometime between 25 April, when Hart gave them the opinions of the three English lawyers on the act by which the assembly suspended the prosecution of Catholic priests for conducting services in private families and copies of the three indictments against Macnemara and the proceedings against Macnemara in chancery (*Md. Arch.*, XXXIII, 125-130), and this date, 5 May.

<sup>74</sup> *Md. Arch.*, XXXIII, 171-172.

<sup>75</sup> The attendance of the upper house on 7 May 1718 was the same as it was on the fifth. *Ibid.*, pp. 166, 167, 173, 177, 179, and Note 64 above.

<sup>76</sup> *Md. Arch.*, XXXIII, 181. See also Chapter 7, “Respectability, 1713-1719,” at Notes 96-107. Before the upper house on 30 April 1718 Macnemara proved his accounts as naval officer of Patuxent. *Md. Arch.*, XXXIII, 151.

<sup>77</sup> *Ibid.*, pp. 166, 167, 173, 179.

<sup>78</sup> *Ibid.*, pp. 181-182, 258-259. What papers the upper house sent to the lower house does not appear, but the papers must have included a copy of the “humble Representation” of the provincial justices, since the Committee of Laws used it in drawing up the bill to disbar Macnemara. They might also have included copies of the two outstanding indictments against Macnemara, which they had already sent to the lower house on 25 April 1718. See Text above after Note 10-16.

<sup>79</sup> *Md. Arch.*, XXXIII, 258-260.

<sup>80</sup> *Ibid.*, pp. 181-182, 258-259.

<sup>81</sup> *Ibid.*, pp. 259-260. There is some confusion here in the *Archives*. According to the record of the upper house, it sent the recommendation to disbar Macnemara to the lower house on Wednesday afternoon (*ibid.*, pp. 181-182), but according to the record of the lower house the delegates considered the recommendation and resolved to bring in the bill against Macnemara on Wednesday morning. *Ibid.*, pp. 258-260.

<sup>82</sup> *Md. Arch.*, XXXIII, 189-190, 270-271.

<sup>83</sup> *Ibid.*, pp. 190, 272. With each of the four amendments the upper house added only a few words to the bill: “Not only here but in the Province of Pensilvania [*sic*],” “Declared himself to be Of the Church of England,” “to prosecute the Suits of the Crown by the Means of the said Maurice Birchfield Esq<sup>r</sup>,” and “In all Cases Saving those that relate to the Crowne.”

<sup>84</sup> *Md. Arch.*, XXXIII, 272. To engross means only to write up a bill in its final form for passage. *Black’s Law Dictionary* (6th edition), p. 529.

<sup>85</sup> *Md. Arch.*, XXXIII, 191-192, 273.

<sup>86</sup> *Ibid.*, pp. 191-192.

<sup>87</sup> According to the record of the upper house, it recommended bringing the bill after doing some other business on the afternoon of Wednesday, 7 May (*ibid.*, pp. 180-182, 258-259); the Committee of Laws delivered the bill to the lower house on Friday, 9 May (*ibid.*, pp. 189-190, 270-271); and the upper house notified the lower house of the final passage after doing only three other pieces of business on the afternoon of that day. *Ibid.*, pp. 191-192.

<sup>88</sup> *Ibid.*, p. 305. The clerk of the lower house was Michael Jenifer. *Ibid.*, pp. 201, 285.

<sup>89</sup> *Ibid.*, pp. 310, 314, 382. For Macnemara's petition, see also Chapter 12, "Reinstatement and Outrage, 1719," at Notes 9-10.

<sup>90</sup> *Md. Arch.* XXXIII, 314-315, 382.

<sup>91</sup> *Ibid.*, pp. 197, 284, 285.

<sup>92</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 525-527.

<sup>93</sup> *Md. Arch.*, XXXIII, 279-280.

<sup>94</sup> See Chapter 5, "Railroading, 1710-1713," at Notes 107-110.

<sup>95</sup> 1715, c. 48, *Md. Arch.*, XXX, 252. By reciting the title of this act the assembly makes it clear that it is to this act that it was referring. *Md. Arch.*, XXX, 248; XXXVI, 526.

<sup>96</sup> In the second act against Macnemara, which the assembly passed at its session of 14 May to 6 June 1719, the assembly changed "an high Papist" to "an Irish Papist." 1719, c. 17, *Md. Arch.*, XXXVI, 528.

<sup>97</sup> The words "Birth Day of the" are left out of the copy of the act of 1718 in the *Archives*. *Md. Arch.*, XXXVI, 526. They do appear in the original law. General

Assembly, Law Record, Liber L. L., No. 4, p. 405. The wording in the *Archives* is “firing the City Guns on the supposed Pretender,” which obviously does not make sense.

<sup>98</sup> For earlier instances in which the assembly expressed its concern over the incidents of the summer of 1716, see joint message to Hart, 28 July 1716, *Md. Arch.*, XXX, 415, 526, and joint message to Baltimore and Guilford, 31 July 1716, *ibid.*, pp. 423, 536.

<sup>99</sup> See Chapter 7, “Respectability, 1713-1719,” at Notes 59-93.

<sup>100</sup> *Md. Arch.*, XXXIII, 279-280.

<sup>101</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 525-527. Emphasis added.

<sup>102</sup> See Thomas Pengelly’s interpretation of the act. *Md. Arch.*, XXXIII, 306, and Chapter 12, “Reinstatement and Outrage, 1719.” at Note 12.

At the provincial court for July of 1718 Thomas Bordley replaced Macnemara in three criminal actions involving seven defendants (Provincial Court Judgment Record, Liber P. L., No. 4, pp. 69-70, 70-71, 71-72), but in another criminal case the clerk, in what appears to be a mistake, includes Macnemara as continuing as the defendant’s attorney: “by his Attorney afd” and “by his said att.” *Ibid.*, pp. 77-80.

At this court Macnemara did appear in his proper person — as his own attorney — in two civil actions in which he was the plaintiff. *Ibid.*, pp. 17, 21-22.

<sup>103</sup> *Md. Arch.*, XXXIII, 134, 169.

<sup>104</sup> *Ibid.*, p. 170.

<sup>105</sup> Hart also technically violated his instructions by calling Macnemara before the upper house rather than before the chancery court. Six members of his council had sat with him in the chancery court on 19 April 1718 (Chancery Record 3, p. 414), only one less than the number who sat with him in the upper house on 5 May (*Md.*

*Arch.*, XXXIII, 166, 167), and therefore he and his council could have ganged up on Macnemara as easily in the chancery court as they did in the upper house, and he would have avoided this technical violation of his instructions.

<sup>106</sup> The members of the upper house used the words “most Grateful Resentment,” but an archaic definition of “resentment” is “a specific emotion or expression of an emotion (as appreciation, interest, good will).” *Webster’s Third New International Dictionary of the English Language Unabridged* (1981). *Webster’s New Universal Unabridged Dictionary* (2nd edition; 1983) has as an obsolete definition of “resentment” as “the taking of a thing well or ill; often, a taking well; a strong perception of good.”

<sup>107</sup> *Md. Arch.*, XXXIII, 194-195.

<sup>108</sup> *Ibid.*, pp. 185, 186, 265, 266.

<sup>109</sup> *Ibid.*, pp. 194, 276.

<sup>110</sup> See Chapter 7, “Respectability, 1713-1719, at Notes 111-112.”

<sup>111</sup> *Md. Arch.*, XXXIII, 277-282.

<sup>112</sup> At the same time, however, it is possible that some Protestants were using a non-existent threat as an excuse to persecute Catholics.

<sup>113</sup> David W. Jordan, *Foundations of Representative Government in Maryland, 1632-1715* (New York: Cambridge University Press, 1987), p. 118.

<sup>114</sup> *Md. Arch.*, XXXIII, 279, 281.

## *Chapter 12*

### *Reinstatement and Outrage, 1719*

If John Hart and the members of the assembly thought that with the passage of the act for the better support of magistrates and for disabling Thomas Macnemara from the practice of law in the province they had finally got him out of their hair for good, they had a disappointment coming. Baltimore and Guilford disallowed the law, and the assembly had to disbar him all over again.

On 10 May 1718 Hart signed and sealed the act by which the assembly disbarred Macnemara in the province;<sup>1</sup> on 23 May Abraham Birkhead complained to Hart that Macnemara had collected £86.5.0 sterling from him for the Crown rather than the £56.10.4 sterling to which he had confessed in chancery in September of 1717;<sup>2</sup> and in chancery on 31 May Hart, Samuel Young, and Philemon Lloyd examined Macnemara concerning Birkhead's charges.<sup>3</sup> On 22 and 29 June Macnemara allegedly encouraged Edward Griffith to speak seditiously against John Hart, though he was never indicted for it, and Griffith got off with an apology to Hart.<sup>4</sup> At the provincial court in July he unsuccessfully defended Thomas Woodfield on the charge of perjury.<sup>5</sup>

Soon after that Macnemara went to England,<sup>6</sup> where he hired three English lawyers to review the act against him.<sup>7</sup> Hart made the trip appear as sinister as he could.

Unwilling to admit that it might have been natural for Macnemara to want to go to England, where he could try in person to convince Baltimore to disallow the act, when at the chancery court on 14 October 1718 he continued eleven cases in which Maurice Birchfield was suing for the Crown he “observed” that Macnemara, who was acting as Birchfield’s attorney, had “ffled from Justice” and that nobody had appeared in his place.<sup>8</sup>

Apparently after getting most if not all of their information from Macnemara himself,<sup>9</sup> all three lawyers supported him. John Hungerford pointed out that even though Macnemara lived in Annapolis, where the assembly was sitting, the delegates had never summoned him before them but rather had passed the act with so much secrecy that he had had no opportunity to defend himself. When by accident Macnemara heard what the assembly was doing he requested a chance to appear, but the delegates ignored the request, and after the assembly was prorogued “their Clerk return’d him his Petition without any Answer.”

Further, Hungerford said, the general insinuations in the preamble of the act were groundless. Macnemara’s greatest enemies had not been “able to prove any undue or Unfair Practice on him in one Single Instance.”

Getting warmed up, Hungerford had harsh words for the assembly. He asked himself three questions: whether “an Act grounded on such general Surmises and carried on in such a manner” was illegal and arbitrary; whether the proprietor ought in justice to reject the act “as being a thing without Precedent And Touching on the Freehold and Liberty of the Subject;” and whether any of the alleged facts mentioned in the preamble of the act were sufficient to disqualify Macnemara from his practice.

While Hungerford did not answer the third question directly, his answers to the first two make his answer to the third one obvious. He “never knew nor heard that

the Legislature of any Civilized Country [had] ever past an Act so Arbitrary and unjust” as this one seemed to be. He was convinced not only that if Macnemara applied to the proprietor he would refuse to ratify it but also that if Macnemara protested to the King in Council the king would order an investigation into such harsh usage of one of his subjects. If Hungerford’s information was accurate, that investigation would result in some redress that might affect the interest of the proprietor and the colony.<sup>10</sup>

Here was a very strong warning indeed. Such illegal and arbitrary action of the assembly might result in Baltimore’s loss of his province. That possibility might have seemed quite real to Baltimore, who when the assembly passed the act against Macnemara had had possession of Maryland for only three years, after the Crown had controlled it from October of 1690 to May of 1715.<sup>11</sup> If the Crown had taken the province from the Baltimores once, it could take it from them again.

Thomas Pengelly agreed that the assembly had treated Macnemara unfairly. Passing the act without giving him a chance to defend himself was not only contrary to the common rules of justice but was also a denial of a right to which every subject was entitled by law. For those reasons “as well as from the Nature of the Act itself,” which appeared to be very severe and was not supported by any precedents, it deserved the proprietor’s re-examination. If the proprietor found that it was as unjust as it appeared to be, he should disallow it, especially since the charges against Macnemara were “not of themselves Sufficient to render him incapable of practicing.”

In Pengelly’s view the assembly had disbarred Macnemara from practicing in the chancery court even when he was acting as attorney for the Crown.

The Exception in the saving being Generall leaves M<sup>r</sup> Macnemara subject to the Disability Imposed by the body of the Act. In Consequence whereof he is Disabled from Pros-



ecuteing any Causes of the Crown in the Court of Chancery.<sup>12</sup>

The “saving” guaranteed Macnemara the right to finish those cases that he already had in progress, but the “exception” denied him that right in the chancery court.<sup>13</sup> Thus, contrary to the assembly’s intention,<sup>14</sup> Macnemara not only could not prosecute for the Crown in the chancery court in the future but could not even finish the cases that he already had underway there. The assembly had been so careless in its wording that it did not know what it was doing.

Sir Edward Northey, who was the attorney general of England from 1710 to 1718,<sup>15</sup> also agreed that the assembly was being unfair to Macnemara. The proprietor should not ratify the law. The assembly had passed it hastily and without giving Macnemara a chance to defend himself, and it was “Against Naturall Justice to Punish a man unheard, and without giving him an Opportunity to be heard.” Besides that, the assembly’s allegations against Macnemara were too general to justify disbaring him, since in the act it did not mention the particulars of Macnemara’s alleged crimes.

Any court, Northey went on, did have the right to suspend an attorney who behaved himself disrespectfully or insolently, but the court had to record the offensive words.<sup>16</sup> If the offender would not beg pardon for his offence when the court ordered him to, or if the offense was extraordinary or repeated, the court could deprive the attorney of his practice in that court.

The assembly also had the right to disbar an attorney if the circumstances warranted it. If there were records of disrespect or insolence in several courts, or if the offender was convicted of offences against the courts and refused to submit, or if he was “generally Insolent & Misbehaving himself to the Courts of Justice” and his offenses were multiplied, it was just and reasonable for the assembly, if it was still

convinced of his guilt after hearing him, to disbar him from practicing in any court “within that Island.”<sup>17</sup>

Northey discounted, finally, the assembly’s complaint that Macnemara had appeared as counsel for unpopular defendants. Macnemara’s being the attorney “for Malefactors” should not be held against him provided that he behaved himself “with duty” and with respect toward the courts.<sup>18</sup>

After seeing the opinions of the three English lawyers, Baltimore and Guilford had little choice but to disallow the act. They were grateful, they informed the members of the assembly, for the unanimous concern that they had shown for the just authority of the courts and for the persons of Baltimore’s ministers in Maryland. By that concern the members of the assembly had not only manifested their satisfaction at living under the proprietor but had also “in some measure added Strength to the Liberties and Properties” of those they represented, the good people of Maryland.

The general part of the act for the better supporting of magistrates was very necessary, Baltimore and Guilford continued, but since the assembly had tacked the provision against a particular person to the general act — and without giving that person a hearing, which was “the undoubted Right of every one of his Majesty’s Subjects,” — they had to disallow it.

*Ex post facto* laws, Baltimore and Guilford continued without ever saying specifically that the act against Macnemara was an *ex post facto* law,<sup>19</sup> were “always esteemed severe” and had rarely been passed in England. They hoped that the assembly would pass a general act that would apply to all people and therefore make it unnecessary for it to resort to laws against specific individuals.

After noting that they had forwarded to the Commissioners of Customs the

complaint about Maurice Birchfield's "Rigorous and Oppressive Suits" against Marylanders,<sup>20</sup> Baltimore and Guilford ended their message by reassuring the assembly about their attitude toward the Catholics. Since the members of the assembly had known them for so long, they suggested, they could judge from their Lordships' actions that they had "nothing more at Heart than the Protestant Establishment with a Tender Compassion to Consciences Truly Scrupulous Dissenting from it." Therefore the members of the assembly should "let no Imaginations or the Suggestions of Evill minded men," who were concerned neither with the prosperity of the province nor with their Lordships' authority, make them fear "that any Endeavours either publick or Private . . . [could] have the least Influence on the Confidence Established" between the proprietor and the members of "his Great Council Convened in General Assembly."<sup>21</sup>

When Hart received the disallowance from Baltimore and Guilford he considered the crisis with Macnemara and the Catholics so serious that he called the assembly back into session immediately even though it was a very busy time of the year for the planters of the province.<sup>22</sup> He would not have convened them at that time, he assured the joint session on 14 May 1719, if the necessity of affairs had not absolutely required it. He expected "the Same Assiduous and Unanimous application to the Dispatch of business for the publick good" that he had had the pleasure to experience in previous happy assemblies. Their Lordships had commanded him to let the members of the assembly know how grateful they were for the assembly's asserting the public authority of the courts and the justices of the province and also to inform the assembly that for the most part they had approved of its proceedings during its last session. They had disallowed the act for the better support of magis-

trates and for disbaring Macnemara, however, because while they did consider an act for the support of magistrates very necessary they objected to that particular act because the assembly had “tack’d to it a clause, against a particular person, without hearing the party.” Such a hearing was “the undoubted right of every one of his Majestys Subjects,” and therefore their Lordships “on very good Advice & Deliberation” were obliged to disallow it.

Once again all innocence, Hart told the members of the assembly that except for the reasons that appeared in the act itself he was ignorant of their motives in passing it. The reasons listed in the act were strong and well expressed, and the allegations against Macnemara were such known truths that he was sure that the delegates “had taken all Measures proper to the Occasion.”

Thus in Hart’s view Macnemara’s appearance before the delegates when they were considering the act against him must not have been a “Measure proper to the Occasion.” The truth of the allegations was so well known that it had not been necessary to give him a chance to defend himself.

Refusing to dignify Macnemara by mentioning him by name, Hart reminded the joint session that “the party named in the bill” had never applied for a chance to present his defense to the upper house, where “if he had cause he might have been reliev’d.” Nor had he applied to Hart, who could have vetoed the bill, even though “there was Some time” for him to see Hart after both houses passed the bill but before Hart accepted it.<sup>23</sup>

To anyone who knew about Macnemara’s appearance before Hart and the upper house on 5 May 1718, Hart’s claim that Macnemara could have got a fair hearing either before the upper house or before Hart alone must have rung pretty hollow. Hart had violated his instructions by refusing to make proposals to Macnemara,<sup>24</sup> and

if he would not listen to Baltimore and Guilford he was not likely to have listened to Macnemara any more than he had a few days earlier.<sup>25</sup> Burned once, Macnemara was smart enough to know that with the upper house as well as with Hart he would get more of a charade than a real hearing, and he preferred to take his chances with Baltimore and Guilford.

Again refusing to mention Macnemara by name, Hart would send the delegates the opinions of the three English lawyers “on the partys Suspension from his practice.” The sentiments of those lawyers were worthy of the delegates’ observation, but if either “this party or others” were allowed to insult the courts as Macnemara had “so Often done with Impunity it would destroy the very essence of all Authority and power” of the justices, who were “principally constituted to pull down, and punish the haughty and the Bad, and to Support and Cherish the humble and good.” Therefore Hart recommended that the assembly pass a new act to support the justices that would satisfy their Lordships’ objections.

Finished with Macnemara, Hart again attacked the Catholics, on whom he spent more time than he had spent on Macnemara. After making some suggestions on several other issues,<sup>26</sup> he assured the members of the assembly that he made the suggestions out of the sincerity of his heart and for the welfare of the people of the province. Then, sounding more like a philosopher of the Enlightenment than like the real John Hart, he concluded that since the members of the assembly were, he thanked God, a free people, they could accept or refuse his proposals, as they found them convenient or inconvenient for their country.<sup>27</sup>

The next day Hart salvaged as much as he could from the disallowance of the law against Macnemara and the opinions of the three English lawyers. When he sent their opinions to the lower house he noted that in his view Sir Edward Northey’s

opinion on the proper behavior of attorneys before the courts sufficiently justified his suspension of Macnemara from his practice in the chancery court and might be of use to the other courts of the province.<sup>28</sup> The hint was clear: if the assembly could not deny Macnemara his practice all at once, maybe each of the courts could do it separately.

The members of the assembly were disappointed at the proprietor's disallowance of the act disbarring Macnemara, but, like Hart, they salvaged what they could out of their Lordships' response to the proceedings of the previous session.

Since it was "the undoubted Right of the Supreme Authority" to call the assembly into session when and as often as it considered necessary for the common good, the members of the upper house assured Hart in their response to him on Monday, 18 May 1719, "no Circumstance of Time ought to Restrain" them when their duty called them to the service of their country even to their disadvantage. They would diligently apply themselves to dispatching all business brought before them for the good of the province.

On this particular occasion, in fact, the members of the upper house all the more cheerfully entered upon their public duty, since their hearts were filled with joy and satisfaction that their Lordships, contrary to the opinion of some people, had approved of most of the proceedings of the previous session of the assembly. Especially they appreciated their Lordships' encouraging the assembly to take such proper measures as would "most Effectually Support the Authority of the Courts of Justice" and protect the persons of Baltimore's ministers, as Hart had informed them in his kind speech to both houses of the assembly.

The members of the upper house continued with a long endorsement of Hart's

complaints about the Catholics and then, like Hart unwilling to dignify Macnemara by mentioning him by name, moved on to “the Proceedings against a particular person mentioned in the Act for the better Supporting of Magistrates.” They believed that after hearing the opinions of the three lawyers the proprietor had no choice but to disallow that law. They were inclined to believe that “no other Circumstance than that of Condemning a Person unheard” could have caused Baltimore and Guilford to disallow the act and that “after some Eminent Practitioners in the Law had given their Opinions that It was Arbitrary and Illegal” their — Baltimore’s and Guilford’s — “Just Regard of the Rights and Liberties of an English Subject” made it impossible for them in prudence to justify it.

If Macnemara did not have a hearing before either house of the assembly before it passed the act against him, however, it was probably because he did not want one. The members of the upper house had just reason to suspect that “the party therein Charged[,] having a Just Apprehension of his own Demeritts,” had deliberately failed to request a hearing before the upper house. He knew that if he had been condemned in the upper house after appearing before it his design “to Clamour in England against the Justice of the Act” would have been defeated. That design manifestly appeared “by his Artfull Management in Deferring his Petition to the lower house untill after the bill had been Engrossed there,” which if the members of the upper house were not misinformed was the reason the delegates gave Macnemara for not granting him a hearing and the basis of “his Complaint in England that he was Condemned unheard.”

After agreeing with Hart on the need to provide better education for the youth of the province as long as it did not cost them anything and after assuring him that they would diligently apply themselves to any business brought before them for the

good of the country, it remained only for the members of the upper house to make a dutiful acknowledgment of Hart's most assiduous endeavors to maintain an establishment that gave the province "a Pleasing Prospect of Liberty and Property . . . for ages to Come."<sup>29</sup>

While the members of the upper house showed more concern about the Catholics than about Macnemara, the delegates in their response to Hart on 19 May were more concerned about Macnemara. They assured Hart that he had sufficiently explained the necessity to convene the assembly at this time even though it was inconvenient for them. Since they would always prefer the public good to any private interest of their own, they would try to apply themselves to the business before them with such unanimity and diligence as would make them equally acceptable to Hart and to the country.

Salvaging what they could from the disallowance of the act against Macnemara, just as Hart and the members of the upper house had done, the delegates were thankful for their Lordships' approval of their recent assertion of the authority of the courts and the officials of the province. They would most sincerely endeavor to deserve their continued approval by using their utmost efforts to strengthen and continue that authority.

The delegates were concerned, however, that the justice of the assembly should be questioned on the private opinions of some gentlemen of the law. They were convinced that if disinterested persons had heard the reasons for the assembly's passing the act — "both as to the matter and [the] Manner of it" — the opinions of the lawyers would have inclined Baltimore and Guilford to confirm it rather than to disallow it. They were surprised to find that gentlemen "so eminent for learning in the Laws of great Britain" would claim that "a Lawyers contemning the Authority [of] and af-



fronting” the judges he pleaded before and daring a court to proceed against the criminals for whom he pleaded, together with the other reasons that the assembly mentioned in the preamble of that law — and especially Macnemara’s “persisting in a continued course of misbehaviour” — were not sufficient reasons for the justices whom he treated with such contempt to bar him from practicing before them.

The delegates’ attacking Macnemara for defending “criminals” provides powerful evidence of the position of the defendant in eighteenth-century Maryland, where authority refused to distinguish between accusation and guilt. Of course Macnemara was not defending criminals: he was defending defendants. Whether the defendants were criminals or not is what the trial was supposed to determine. In eighteenth-century Maryland, however, authority considered the defendant guilty until he could prove himself innocent.<sup>30</sup>

Surprised that the three English lawyers would not consider Macnemara’s behavior in court as the assembly described it sufficiently contemptuous to justify the justices’ barring him from practice before them, the delegates were even more surprised that those gentlemen of the law should accuse the assembly of being unjust and arbitrary in passing the law against him “on the Representation of those Magistrates[,] which only added life and vigour” the delegates’ own determination to disbar him.

Thus the delegates admitted that they were determined to disbar Macnemara whether the provincial justices had made their “humble Representation” against him or not. The humble representation only provided them with additional justification.

Taking their cue from Hart and refusing to dignify Macnemara by mentioning him by name, just as the members of the upper house did, the delegates accepted Hart’s claim that he had not realized that the lower house had passed the act without

hearing “the particular person” it affected and that he did not know their reasons for refusing to grant Macnemara a hearing. One of those reasons, “Among many others” that they would get to later, was that even though the delegates had good reason to believe that he knew about the first vote on the bill he had not applied for a hearing until after the upper house had passed the engrossed bill and had sent it back to the lower house. Since it seemed unparliamentary to call into question a bill that the assembly had solemnly passed, Macnemara’s proper course was to call on Hart to reject it.

Then, however, the delegates admitted that they would not have granted Macnemara a hearing in any case. Since the justices before whom Macnemara had pleaded had condemned his behavior, and since the judges were the proper people “to censure the behaviour of their own officers,” granting Macnemara a hearing “would have been calling in Question the veracity of those Judges without cause.” It would have made them “parties or rather defendants” in a matter in which the law made them judges and in which “the facts they Accused him of were Notorious.”

Such a view, of course, would eliminate any review or appeal of anything judges do and would make notoriety the equivalent of guilt.

The very essence of authority and government, the delegates continued, was at stake in the battle with Macnemara. If lawyers were given the least color of encouragement to refuse to subject their behavior to the judgment of the courts in which they practiced and to dispute with the justices over that behavior; if neither courts nor country could be trusted to judge the behavior of one such attorney; and if the whole country had to become suitors in England, where the truth of its allegations would be questioned even when the magistrates requested the legislature “to assist in the regulation of Such practices by punishing . . . the most Notorious offenders in this

Sort” and where neither the justices nor the members of the assembly could conveniently appear to prove their case, the Constitution — “with all humble Submission be it Spoken” — could not “Deserve the Charge of its Support.”

The delegates hoped for better things, however, and clearly they had understood Hart’s hint that each of the courts could disbar Macnemara separately. They hoped that the courts in Maryland would not be denied the power that all courts had to discourage a person who though he might have been a barrister in England was only an attorney in Maryland and who had been generally troublesome to the entire province, as every inferior court had a right to do with every attorney who misbehaved before it. They did not consider such troublesome behavior sufficiently discountenanced if the person who had been so remarkable an instance as the law against him suggested was able to justify his ill conduct in spite of the government and the country.

How the delegates were distinguishing here between a barrister and Macnemara is unclear, but the distinction was a false one. A barrister could practice “as an advocate in superior courts of law,”<sup>31</sup> and since Macnemara could practice in any court in the province he must have been a barrister. In early eighteenth-century Maryland, however, that term was seldom used. Ordinarily officials made no serious effort to distinguish between attorneys, solicitors, and barristers.<sup>32</sup> When a man was admitted to practice in a court, including the high court of appeals, the record refers to him only as an attorney,<sup>33</sup> and often lawyers were referred to simply as practitioners of the law.<sup>34</sup>

As their questioning of the value of the continued connection to Baltimore should have made clear to everybody, the delegates were defiant. Since they considered it their undoubted duty, they would endeavor to pass a sufficient general act for the support of the magistrates in the administration of justice, as their Lordships had

instructed them to do, but in spite of Baltimore's and Guilford's instruction to pass a general act that would make an act against a particular person unnecessary they would also pass a specific act against Macnemara. They would "avoid the Imputation of tacking by proposing a Particular law" against "the particular offender" that would "not be lyable to the exception" that Baltimore and Guilford had had to the previous act.<sup>35</sup>

Again the delegates were defying Baltimore and Guilford. They had already said that the constitution might not "Deserve the Charge of its Support," and while their Lordships had not explicitly told the assembly not to pass a law against a specific person, their wording makes it clear that that is what they meant: they hoped that "such a Generall Act may be made as will so Effectually Reach all particular Persons for the future that there may be no more Occasion to have Resort to the like Extraordinary means."<sup>36</sup>

Finally finished with Macnemara, the delegates could move on to a lengthy expression of support for Hart in his battle with the Catholics. Then, after responding to Hart on some of the issues he had mentioned in his opening speech,<sup>37</sup> they concluded by expressing their gratitude for the sincerity with which he had always acted for the welfare of the province and for his continuing to profess how resolute his intentions were. They would "therefore Seriously consider the Severall matters propos'd" to them and report on them from time to time so that nothing would be wanting on their part "for the Security of the Protestant Succession[,] the necessary Support of Government[,] the Honour of the Lord Proprietary[,] and the Maintenance of the Liberties and properties of his Lordships good people" of the province."<sup>38</sup>

Like Hart and the members of the upper house, no place in their discussion of Macnemara would the delegates dignify him by mentioning him by name. Treating

him in this impersonal way — as an object rather than as a person, or, at least, as an anonymity — probably made it easier than it otherwise would have been for Hart and the members of the assembly to convince themselves that their battle with him was an impersonal one and that they were not conducting a vendetta against him.<sup>39</sup>

And like Hart and the members of the upper house, the delegates did not mention Baltimore's and Guilford's objection that the disbarring of Macnemara was *ex post facto*.<sup>40</sup> Since they intended to pass another act against him, using the same "evidence" that they had used in the first act, and since any future act would be as much *ex post facto* as the first one, the less said about that the better. In their joint message to Baltimore and Guilford at the end of the session they would acknowledge their Lordships' complaint, explain it away by suggesting that Macnemara's case was a special one, pretend that their Lordships' real objection to Macnemara's disbarment was that it was tacked on to the act for the better support of magistrates, and point out that they had corrected that problem by disbarring Macnemara by a separate act.<sup>41</sup>

In his response to the message from the lower house Hart did not tell the delegates not to pass an act specifically against Macnemara. In his very short note to them he assured them that he did not doubt that their favorable comments on the proprietor would be very acceptable to him, highly commended them for their "Steady Resolution . . . to maintain the Protestant Religion and Laws" of the province, and assured them that he was truly grateful for their favorable sense of his administration and that he would "Allways Retain an Affectionate Memory" of that as well as of the delegates' "former good Inclinations" to him.<sup>42</sup>

And that was all. Hart's failure to mention Macnemara was an implicit invitation to pass another act against him. Getting every court to deny Macnemara the right

to practice before it would be too cumbersome, and it might even turn out to be impossible.<sup>43</sup> A specific act against him, even in defiance of the instructions from Baltimore and Guilford, would take care of him — at least until Baltimore and Guilford had time to get another disallowance back to the province. Hart and the assembly could continue the game for the rest of Macnemara's life, if they had to, and he would never be able to practice law in Maryland again.

## *Chapter 12*

### *Reinstatement and Outrage, 1719*

<sup>1</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXXIII, 197, 284.

<sup>2</sup> Chancery Record 3, p. 391; Calvert Papers, No. 260, Maryland Historical Society, Baltimore.

<sup>3</sup> Calvert Papers, No. 260, Maryland Historical Society, Baltimore.

<sup>4</sup> Provincial Court Judgment Record, Liber P. L., No. 4, pp. 3, 76-77; Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 145-146.

<sup>5</sup> Provincial Court Judgment Record, Liber P. L., No. 4, pp. 77-80.

<sup>6</sup> For Macnemara’s trip to England in 1718, see Chapter 7, “Respectability, 1713-1719,” Note 86.

<sup>7</sup> When on 15 May 1719 John Hart sent the opinions of the three English lawyers to the lower house he told the delegates that Macnemara had paid the lawyers: “. . . the Opinions of Council as I am Informed feed [fee’d] by M<sup>r</sup> Macnemara on this Occasion.” *Md. Arch.*, XXXIII, 307, 375. For a quote in which the expression “to fee council [*sic*]” is used in England in 1757, see Stephan Landsman, “The Rise of the Contentious Spirit: Adversary Procedure in Eighteenth Century England,” *Cornell Law Review*, LXXV (1990), p. 548.

<sup>8</sup> Chancery Record 3, p. 416.

<sup>9</sup> The Committee of Laws in its report on the opinions of the three English lawyers on 22 May 1719 makes it appear that the lawyers got all of their information from Macnemara (*Md. Arch.*, XXXIII, 426-427), as do the members of the assembly in their message to Baltimore and Guilford on 6 June 1719. *Ibid.*, pp. 353, 450.

<sup>10</sup> *Ibid.*, pp. 305-306, 375-376.

<sup>11</sup> Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), pp. 113-114.

<sup>12</sup> *Md. Arch.*, XXXIII, 306, 376.

<sup>13</sup> The "saving":

Saving to the said Macnemara a Liberty to Finish all such Actions as are now depending, wherein it appears by Record he is actually concerned for any Person or Persons, on behaving himself decently, *except in the Chancery Court, wherein he has been already Suspended in all Cases, save those that relate to the Crown.*

1718, c. 16, *Md. Arch.*, XXXVI, 525-527. Italics added.

<sup>14</sup> As the assembly makes clear in its message to Baltimore and Guilford at the end of its session of April and May of 1718. *Md. Arch.*, XXXIII, 279-280.

<sup>15</sup> Basil Williams, *The Whig Supremacy, 1714-1760* (2nd edition; revised by C. H. Stuart; Oxford: The Clarendon Press, 1962), p. 474.

<sup>16</sup> Here, of course, Northey was asking only what Macnemara had asked of John Hart in the chancery court on 10 October 1717 and what Hart had refused to give him. *Md. Arch.*, XXXIII, 129-130; Chancery Record 3, pp. 399-400; Chapter 10, "John Hart's Vendetta, 1717-1719," at Note 24.

<sup>17</sup> Sir Edward Northey's referring here to "that Island" when he was considering the power of the assembly rather than that of parliament reflects the casual attitude of Englishmen toward the geography of America. In the seventeenth century



Maryland was spoken of generally both in England and America at this time as being a plantation in Virginia. There are innumerable references to “Maryland in Virginia.”

Nathaniel Claiborne Hale, *Virginia Venturer: A Historical Biography of William Claiborne, 1600-1677. The Story of the Merchant Venturers Who Founded Virginia and the War in the Chesapeake* (Richmond: The Dietz Press, Incorporated, 1951), p. 274.

The political units in America were variously designated by the terms “colony,” “island,” “islands,” or “province” (or “territory and dominion” in the case of New England).

Leonard Woods Labaree, *Royal Instructions to British Colonial Governors, 1670-1776* (2 vols.; New York: D. Appleton-Century Company, Inc., 1935; reprinted New York: Octagon Books, Inc., 1967), I, xiii-xiv.

<sup>18</sup> *Md. Arch.*, XXXIII, 306-307, 376-377.

<sup>19</sup> The definition of an *ex post facto* law that applies to the law against Macnema is that it is a law that makes criminal something that was not a crime at the time the act was committed. It is a retroactive criminal law. Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 580.

<sup>20</sup> See Chapter 7, “Respectability, 1713-1719,” at Notes 59-93.

<sup>21</sup> *Md. Arch.*, XXXIII, 302-303, 372-373.

<sup>22</sup> At the end of the previous session of the assembly, on 10 May 1718, Hart prorogued it until 7 October 1718 (*Md. Arch.*, XXXIII, 197, 285), but it did not meet at that time.

<sup>23</sup> See Note 25 below.

<sup>24</sup> *Md. Arch.* XXXIII, 168-169; Chapter 11, “Disbarred Again, 1718,” at Notes

52-54.

<sup>25</sup> Macnemara's interview with Hart and the members of the upper house occurred on Monday, 5 May 1718 (*Md. Arch.*, XXXIII, pp. 168-169); the Committee of Laws delivered the bill to the lower house on the morning of Friday, 9 May (*ibid.*, pp. 189-190, 270-271); both houses passed the bill against Macnemara on its final reading that afternoon (*ibid.*, pp. 191-192, 273); and Hart signed and sealed the bill the next day. *Ibid.*, pp. 197, 284. See Chapter 11, "Disbarred Again, 1718," at Notes 80-86.

<sup>26</sup> Hart mentioned the need to clarify the act to repeal some laws and to improve the law on summoning juries, the need to repair roads, to build a bridge over the Patuxent River at Queen Ann Town, and to improve the road over Kent Marshes on the Eastern Shore, the inadequacy of the fund for free schools, the excessive cost to the province of the bounty on squirrels, and the need to get a more accurate count of taxables.

<sup>27</sup> *Md. Arch.*, XXXIII, 298-302, 367-371.

<sup>28</sup> *Ibid.*, pp. 307, 375.

<sup>29</sup> *Ibid.*, pp. 308-311.

<sup>30</sup> C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), p. 195; C. Ashley Ellefson, "The Functions of Punishments in Eighteenth-Century Maryland," Paper delivered at the Hall of Records' Conference on Maryland History in Honor of Morris L. Radoff, Annapolis, 14-15 June 1974.

<sup>31</sup> Barrister: *Oxford English Dictionary On Line*, definition a. A solicitor is "One qualified and formally admitted to practice as a law-agent in any court." *Ibid.*, definition 3a. See also *Black's Law Dictionary* (6th edition), p. 151.

<sup>32</sup> In 1707 authority in Maryland made a distinction between a barrister and an attorney. When on 17 July 1707 the council considered the establishing of the assizes, four lawyers were present: Charles Carroll and Wornell Hunt, identified as barristers, and George Plater and Cornelius White, identified as attorneys at law. *Md. Arch.*, XXV, 216. Two and a half months later, however, when Wornell Hunt applied for readmission to the practice of law after Governor John Seymour disbarred all attorneys, he is referred to only as an attorney. *Ibid.*, p. 226; Chapter 3, “Early Troubles, 1703-1710,” at Notes 44-51.

In each of the two acts by which it disbarred Macnemara the assembly ruled that he could not practice law “as Council [*sic*], Attorney, Sollicitor, or otherwise” but did not use the word “barrister.” 1718, c. 16, *Md. Arch.*, XXXVI, 525-527; 1719, c. 17, *Md. Arch.*, XXXVI, 528-530.

<sup>33</sup> On 11 November 1709 Thomas Macnemara, Thomas Bordley, and Richard Dallam were admitted “to practice as Attorneys” in the high court of appeals. Carroll T. Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729* (Washington: The American Historical Association, 1933), p. 108.

<sup>34</sup> *Md. Arch.*, XXV, 226, 236.

<sup>35</sup> Here the Journal of the upper house reads that the delegates would “avoid the Imputation of tacking by proposing a *Gen<sup>l</sup>* Law for the like Support ag<sup>t</sup> the Perticular offender” (*Md. Arch.*, XXXIII, 315), while the Journal of the lower house reads that the delegates would “avoid the Imputation of tacking by proposing a *Particular* law for the like Support against the particular offender.” *Md. Arch.*, XXXIII, 383. Emphasis added. Since the wording in the Journal of the upper house does not make sense, I have used the wording of the lower house.

<sup>36</sup> *Md. Arch.*, XXXIII, 303, 372.

<sup>37</sup> The delegates mentioned clarifying the repealing law and revising the laws on juries, roads and bridges, taxables, and squirrels. Like the members of the upper house, they also would have liked to improve the schools in the province as long as it did not cost them anything.

<sup>38</sup> *Md. Arch.*, XXXIII, 313-317, 381-385.

<sup>39</sup> Baltimore and Guilford in the message in which they informed the two houses of their disallowance of the act against Macnemara also referred to the “Clause against a Particular Person,” but they have already referred to Macnemara by name in their recital of the title of the act, and they were speaking generally: the assembly should not pass an act against *any* specific person, not just Macnemara. *Ibid.*, pp. 302-303, 372-373.

<sup>40</sup> The three English lawyers did not mention that the act against Macnemara was an *ex post facto* law, either. *Ibid.*, pp. 305-307, 375-377.

<sup>41</sup> *Ibid.*, pp. 353, 451; Chapter 13, “Disbarred Once More, 1719,” after Note 45.

<sup>42</sup> *Md. Arch.*, XXXIII, 318, 389.

<sup>43</sup> In their review of the act against Macnemara and the opinions of the three English lawyers, the members of the Committee of Laws of the lower house say that many of the delegates who were justices of the courts before which Macnemara practiced knew personally about his bad conduct but were “unwilling to Subject themselves to the weight of his resentments by Suspending him without Any Act.” *Ibid.*, p. 429.

## *Chapter 13*

### *Disbarred Once More, 1719*

If John Hart and the members of the assembly wanted to be certain that Macnemara's legal career in Maryland was finished they had to ignore Baltimore's and Guilford's hope that the assembly could pass a general act that would make it unnecessary for it to pass an act against a specific individual. Certainty required that they pass another act against him. If they depended on a general act, and if he behaved himself in the future, they would have to allow him to continue his practice. Obnoxious as he had been in the past, they could not fully depend on his being as obnoxious in the future, and therefore they had to condemn him again for his past sins rather than merely hope for future ones.

On Tuesday, 19 May 1719 — the same day on which they made their response to Hart — the delegates referred the opinions of the three English lawyers to their Committee of Laws for its response.<sup>1</sup> Three days later the Committee had its report ready, but the delegates did not consider it until 3 June,<sup>2</sup> the day *after* both houses passed the new bill against Macnemara on its final reading.<sup>3</sup> Thus the report of the Committee of Laws became a justification after the fact, propaganda aimed at Baltimore and Guilford rather than information for the benefit of the delegates in their consideration of Macnemara's future.

In reviewing the opinions of the three English lawyers, the members of the Committee of Laws, which included six justices among its seven members — a non-quorum justice of the provincial court, the chief justice of one county, a non-quorum justice of each of three counties, and a member of the mayor's court and the court of hustings of Annapolis<sup>4</sup> —, were neither judicious nor honest. They exhibited the same contempt for rules of procedure and for specific evidence as the entire assembly exhibited when it passed the first act against Macnemara.

Repeating the complaint of the lower house in its response to Hart, which they had also written,<sup>5</sup> the members of the Committee began by protesting that Macnemara was “Suggested to be a Barrister at Law without taking the Least Notice of his practicing in the Courts . . . [in Maryland] as an Attorney.” They must have known, however, that since Macnemara could plead in the superior courts he must have been a barrister even though he might never have been called one.<sup>6</sup>

Then the members of the Committee did manage to get a little more relevant if no more judicious. To Macnemara's complaint that he had never been called before the assembly to answer the allegations against him and that the assembly had passed the law disbarring him “with so much Secrecy that he had . . . [no] Opportunity of Justifying himself,” they answered that the charges that the assembly listed against Macnemara in the preamble of the law were so notorious that they needed no inquiring into and that it was well known in the province that it was “not Only Impracticable but almost Impossible” for the assembly to pass any law in secret. In pursuing the case Macnemara admitted that he had notice of the bill, and he *had* petitioned to be heard against it.

Thus the members of the Committee made no effort to deny that Macnemara had found out about the bill against him only by accident, as he had told the English

lawyers,<sup>7</sup> but simply fog the issue with obtuse language: “And in pursuing . . . [the] State of the case he . . . [owned] it was not such but that he had Notice thereof, and Petition’d to be heard ag<sup>t</sup> the Bill.”<sup>8</sup> Macnemara’s hearing about the bill by accident satisfied the necessity of fair play as well as if the delegates had given him official notice and had invited him to appear.

Macnemara had insinuated further, the members of the Committee continued, that “no order was made on his Petition,” but, they pointed out, “after the Assembly was prorogued the Clerk returned it without any Answer.” Here they appear to be saying that the lower house had made an order on his petition, implicitly if not explicitly, and the order must have been to return the petition to Macnemara without considering it.

The members of the Committee then misrepresented the facts of the case in two ways when they pointed out that while Macnemara had twice insisted that he had applied for a hearing to the assembly, by which they thought he must have meant the general assembly, he had actually applied only to the lower house, and he had petitioned the lower house only after the bill “had been some days before them and the Engrost bill had past that house.” It would have been unparliamentary, therefore, for the delegates to debate the bill again.

During the early eighteenth century, however, people often referred to the lower house as the assembly,<sup>9</sup> and therefore the members of the Committee of Laws would not even have had to give Macnemara the benefit of any doubt to conclude that he too was referring to the lower house and therefore was not misrepresenting what he had done. Second, the bill against Macnemara had not been before the lower house for “some days” before he petitioned to be heard against it. The Committee of Laws delivered the bill to the lower house on the morning of Friday, 9 May 1718,<sup>10</sup> and both

houses passed it on its final reading that same afternoon.<sup>11</sup>

Later in their devious report the members of the Committee, like the delegates in their response to Hart on the nineteenth,<sup>12</sup> admitted that they would not have granted Macnemara a hearing in any case. If the assembly had heard Macnemara before it passed the act against him, the Committee insisted, it could not have heard him alone but would have had to hear his accusers as well.<sup>13</sup> The justices would have had to testify against Macnemara and defend themselves. That would have drawn them into a contest about a matter of which they themselves were the proper judges.

Ignoring the twin realities that the upper house had passed the bill against Macnemara on its final reading on the same day on which it was introduced and that the members of the upper house consistently supported Hart when in Macnemara's meeting with Hart and the upper house on 5 May,<sup>14</sup> only four days before both houses passed the bill against him, Hart ignored the instructions of Baltimore and Guilford and insisted on a humiliation that made it impossible for Macnemara to submit,<sup>15</sup> the Committee insisted that Macnemara had early enough notice that he could have applied to the upper house, which could have relieved him if he had shown any reason why it should. Similarly ignoring the reality that still fresh in Macnemara's mind would have been Hart's arrogant and contemptuous treatment of him when he appeared before the upper house that day, the members of the Committee added that he could also have applied to Hart, who could have refused to approve the bill. Macnemara's failure to apply either to the upper house or to Hart for a hearing was evidence of "either his Sense of Guilt or his resolute obstinacy."

Like the members of the assembly would do later in their message to Baltimore and Guilford, the members of the Committee of Laws parrot Hart's argument exactly.

The members of the Committee of Laws believed that the three English lawyers



did not know the facts of the case and that they had based their recommendations that Baltimore disallow the act on Macnemara's claim that "the Generall Insinuations contained in the preamble" of the act were groundless and that even Macnemara's greatest enemies had "not been able to prove any undue or unfair practice against him." If the allegations against Macnemara were as false as he said they were the members of the Committee themselves would have agreed "with the opinions of those Learned Council" that Baltimore and Guilford should have disallowed the act.

In response to Thomas Pengelly's insistence that the alleged offenses mentioned in the act were not sufficient to incapacitate Macnemara from the practice of law in the province, the members of the Committee of Laws added nothing new but only listed some of Macnemara's alleged offenses again. At the special court of oyer and terminer to try the "criminals for drinking the Pretenders health and audaciously Cursing his Sacred Majesty King George and for firing the City Guns on the Supposed birthday of the Pretender" he had contemned the authority and affronted the persons of the judges; he had publicly affronted the chancellor — Hart — in the execution of his office and had wilfully refused to make his reasonable submission, as the proprietor had ordered him to do; he was so turbulent and insolent that the justices would not sit if he was allowed to plead before them;<sup>16</sup> and although he had often been suspended from the practice of law for his misbehavior and had been re-admitted "on his fair promises of Amendment" he still persisted in his insolent behavior.<sup>17</sup>

Toward the end of their report the members of the Committee returned to Macnemara's alleged defiance of the justices of the special court of oyer and terminer in Annapolis on 10 July 1716. When an attorney who is "Pleading for malefactors" dares a court to proceed against them, they thought, he was not behaving himself with

the duty and respect that Sir Edward Northey himself mentioned.

Wearying, apparently, of the repetitious recitation, the members of the Committee referred to the act against Macnemara itself and to the humble representation of the four provincial justices for a fuller list of his misdeeds.

Apparently hoping that a reference to England would strengthen the assembly's case, the Committee pointed out from Moore's *Reports* that during the reign of James I the Lord Chancellor directed Sir Henry Montague, when he was sworn in as the chief justice of the King's Bench, "to admonish, to reprehend and to Correct" any lawyers who did not observe the discretion and duty that was appropriate in court. If he "found a threatening way of pleading in any babbling and Tumultuous Lawyers, he should not only Injoyn them [to] Silence but [should also] Sequester them from their practice and Exercise before him if he Saw cause," provided that he took care that the client's case was not prejudiced. Judging by Moore's *Reports* and "by Other books" that they neglected to identify, as well as by "the Middle parragraph" [*sic*] of Sir Edward Northey's opinion, the members of the Committee believed that Macnemara's misdeeds were "a Sufficient Cause for Suspending such a practitioner from his practice," regardless of anything that Serjeant Pengelly said in his opinion.<sup>18</sup>

Since the act by which the assembly disbarred Macnemara conformed to the Lord Chancellor's direction, in regard both to suspending attorneys and to protecting the causes of clients, the Committee did not find it "Liable to the Imputation of . . . Severity." If the act was "unprecedented as to the Manner of [its] passing," so were the manners of the man it affected. And, the Committee added in parentheses, Macnemara's suspension in the chancery court was "exactly conformable" to Sir Edward Northey's opinion.

Though the charges against Macnemara were general, the Committee continued

in a recipe for tyranny, a legislative body did not have to be as specific as a court of law. Sir Edward Northey's objection that the allegations against Macnemara were too general must have meant that he considered the legislative body of the province a grand jury and the act against Macnemara a bill of indictment to which he could take exception for uncertainty. But the allegations in a law did not have to be "so particularly and certainly Express as in an Indictment," and the members of the Committee hoped that people could depend more "on the Justice of a Legislative than on the Proceedings of Every Inferior Court."<sup>19</sup> Clearly the members of the Committee of Laws, six of the seven of whom were justices themselves, did not have much confidence in their own courts.

Nor, in the view of the members of the Committee, was a legislative body bound by rules of procedure. To Thomas Pengelly's opinion that the assembly's passing the act against Macnemara without hearing him in his own defense was contrary to the common rules of justice, they replied with another ingredient in their convenient recipe for tyranny: a legislative body was "not Tyed to Common rules." As long as what the legislative body did was just, it could "make new rules or Dispense with old ones as to the Manner of doing it."

The courts were "the Proper Judges to censure the behaviour of their Own officers," the Committee continued, and it appeared that the justices of the courts in which Macnemara practiced did condemn his actions. Because Queen Anne had ordered Macnemara reinstated after he was suspended earlier and the justices believed therefore that they had to treat him with diffidence, however, and because the justices were "unwilling to Subject themselves to the weight of his resentments by Suspending him without Any Act," they had asked the assembly for help. Many of the members of the assembly were justices themselves and therefore were personally aware

of Macnemara's bad conduct.<sup>20</sup> The members of the Committee believed that "the legislature could do no less than make a law to Support them."

At the end of its report the Committee became a bit rhetorical. If the assembly did not have the power "to redress their Country's grievances and to remove Nuisances," and it had found Macnemara to be both a grievance and a nuisance; if Macnemara had to be "Supported in his Practice in Spight of Courts and Countrey"; if supporting Macnemara was considered more reasonable than supporting the Proprietor by supporting his magistrates against Macnemara; if all of those who were qualified to serve as justices refused to serve because they either had "tamely [to] Submitt to affronts, or draw themselves into tedious and Chargeable contests" even though they received no fees or pensions to compensate them for the great burden of serving as justices, Marylanders were not as happy in their constitution as the members of the Committee of Laws had hoped they had reason to believe. They asked the members of the House to "pardon the expostulation."

The Committee concluded with three questions, the answers to which, no doubt, the members of the Committee were convinced they already knew. "What Impartiality can there be in Judges," they asked,

where if they oblige not the resenting Council pleading before them, they are Sure to be Abused or Affronted by him, or become the object of his revenge[?] Is it not then necessary for the legislature to interpose where the honour of His Lordships Government[,] the Support of his Magistrates in the Administration of Justice[,] and the Peace and Quiet of the Countrey are so nearly concern'd? Can the Opinions of the aforesaid Learned Council be more considerable in An Aggrievance complained of by the Countrey than the Judicial procedure of the whole Legislative body of it[,] who voted in that Law and past it on three or four Severall readings

without a single dissenting vote?<sup>21</sup>

On Monday, 25 May, three days after the report of the Committee of Laws was ready but nine days before the delegates considered it, they ordered the Committee of Laws to draw up an act for the better support of the magistrates as well as “a Bill relating to M<sup>r</sup> Macnemara according to the proposalls in the Answer.”<sup>22</sup> The “Answer” must be the delegates’ response to Hart’s opening speech, in which they promised to bring in a separate bill for disbarring Macnemara so that they would “avoid the Imputation of tacking” the disbarment to another bill.<sup>23</sup>

By Tuesday afternoon the Committee of Laws had both bills ready. Neither bill cost the Committee much effort. It copied the new bill against Macnemara almost directly from the act that Baltimore and Guilford had already rejected, and part of the short bill for the support of the magistrates also came from that act.<sup>24</sup>

The delegates read the bill for the better support of magistrates for the first and second times by special order and resolved by a majority of votes that it would pass,<sup>25</sup> and then they also read the bill against Macnemara for the first time, decided that rather than refer it to the next day they should by special order read it for the second time immediately, passed it by a majority of votes, and sent it to the upper house.<sup>26</sup>

On that same afternoon the upper house read the bill for the better support of the magistrates for the first time and ordered that it lie on the table for a second reading.<sup>27</sup> As its last piece of business that afternoon it also read the bill against Macnemara for the first time and ordered that it be read a second time the next morning.<sup>28</sup>

On Wednesday, however, the upper house did very little business, possibly because Hart was already not feeling well.<sup>29</sup> It did read the bill for the better support of magistrates and sent it back to the lower house with three simple amendments.<sup>30</sup> On Thursday the delegates passed the bill with the amendments and sent it to the

Committee of Laws to be engrossed.<sup>31</sup>

That day Hart could not attend the upper house at all, and it did even less business than it did the day before.<sup>32</sup> On Friday afternoon the lower house passed the engrossed bill for the better support of magistrates and sent it back to the upper house,<sup>33</sup> which passed it that same afternoon.<sup>34</sup>

The upper house did not get to the bill against Macnemara until Monday, 1 June. As its last piece of business that morning it unanimously resolved that the bill would pass with two amendments. One of the amendments only added some wording,<sup>35</sup> but by the other amendment the upper house suggested that the outstanding indictments against Macnemara be forwarded to Baltimore and Guilford with the act. If Macnemara's enemies had had no success convicting him on the indictments that they had already tried,<sup>36</sup> they could at least make the best possible use of those that were still pending. The upper house sent copies of the indictments to the lower house along with the amendments and the bill.<sup>37</sup>

The delegates accepted the amendments immediately<sup>38</sup> and apparently sent the amended bill to the Committee of Laws for engrossing. The next afternoon the lower house passed the engrossed bill with the amendments,<sup>39</sup> and the upper house accepted it that same afternoon.<sup>40</sup> Hart accepted both bills on the sixth, the last day of the session, along with the other bills that the assembly had passed during the session.<sup>41</sup>

Instead of responding in any substantive way to the conclusions of the three English lawyers that the allegations against Macnemara were either groundless, insufficient to justify disbarring him, or too general and lacking in specifics, in the second act against him the assembly repeated its attack on him almost word for word, without becoming any more specific in those charges than it was in its earlier act. It add-

ed only that when Macnemara defended the Papists at the special court of oyer and terminer after the guns of Annapolis were fired on 10 June 1716 Governor Hart was absent “upon the service of the Province”<sup>42</sup> and therefore as mayor and thus chief magistrate of the city Macnemara should have issued his warrant in order to discover and prosecute the offenders. Not only did he fail to do that, the assembly insisted, but he had espoused their cause, as the assembly explained in the second act just as it had in the first.

By the time it passed the second act against Macnemara the assembly, parroting what Hart said in the chancery court on 14 October 1718,<sup>43</sup> could also add that since Macnemara had “with drawn himself and fled from Justice” three indictments against him in the provincial court and one in the Anne Arundel County court were still outstanding against him.<sup>44</sup> In keeping with the amendment suggested by the upper house, the assembly attached copies of the indictments to the act. For good measure it also attached a copy of the “humble representation” against Macnemara that the four provincial justices presented to the upper house on 5 May 1718.<sup>45</sup> Possibly those indictments and the humble representation would enable Baltimore and Guilford to overcome their scruples about approving an act that was not only *ex post facto* but was also directed against “a Particular Person,” just as the first act against Macnemara was.

For all of the reasons that the assembly listed in this act against him as it had in the first, Macnemara would be disabled from practicing law in the province unless he appeared before this or the next session of the assembly and could show, “on a full hearing,” why the assembly should allow him to continue to practice. Thus the assembly would not have to prove Macnemara guilty: he would have to prove himself innocent.

Finally the assembly cleared up the confusion in the earlier act about Macnemara's prosecuting cases for the Crown in the chancery court. Instead of revising the inconsistent wording of the previous act it repeated that wording word for word and simply added that it did not intend him to be "disbarred or disabled from prosecuting" cases for the Crown if the people who were entrusted with them thought fit to employ him.<sup>46</sup>

On 3 June, the day after the assembly passed the engrossed act against Macnemara, the Committee of Laws finally presented its report on the opinions of the three English lawyers. The delegates heard it, concurred with it, and ordered it entered into the record of the lower house for that day.<sup>47</sup>

Thus instead of providing additional support for their case against Macnemara Hart and the assembly simply repeated the old, vague charges against him. They ignored Baltimore's and Guilford's objection that the first act against Macnemara was an *ex post facto* law, as they had to do if they were going to use the same complaints against him in the second act as they had in the first.

Nor were Hart and the assembly going to pay any attention to Baltimore's and Guilford's recommendation that the assembly pass a general act that would make an act against "a Particular Person" unnecessary. The recommendation was not very strong: their Lordships *hoped* that the assembly could pass a general act that would "so Effectually Reach all particular Persons for the future" that there would "be no more Occasion to have Resort to the like Extraordinary means."<sup>48</sup> Hart and the members of the assembly did not consider their Lordships' hope very binding: both incorrigible and contemptuous, they ignored it and passed the new act against Macnemara.

In saying that Macnemara had "with drawn himself and fled from Justice" the



assembly allowed passion to triumph over fairness. Its wording makes it appear that Macnemara was hiding out someplace to avoid prosecution, but actually he had gone to England to protest the earlier act against him, to see the Bishop of London on behalf of Jacob Henderson, the ecclesiastical commissary for the Western Shore, and possibly to see the Spanish ambassador about getting a grant of land in the Spanish West Indies for the settlement of the Catholics in Maryland if Hart remained governor,<sup>49</sup> and apparently he would not return until after this session of the assembly ended.<sup>50</sup>

In inviting Macnemara to appear to defend himself before this session of the assembly or the next the members of the assembly appear to have been more interested in toying with both Macnemara and their Lordships than in responding to Baltimore's and Guilford's objection that they had punished him unheard. They must have known that he could not appear at the current session, since apparently he had not returned from England, and with the passage of the act against him they would again punish him without giving him a chance to defend himself. In their next session they could revoke the punishment if he could convince them that it was unjust, but the onus of proof would be on him rather than on them.

In their address to Baltimore and Guilford at the end of their session, the members of the assembly barely hinted that they had any disagreement with their Lordships. Amid all of the flattery, however, they made it clear that they would do what they pleased about Macnemara.

In another flight of obtuse eighteenth-century wording, the members of the assembly took "the Liberty of Representing with One General Voice that nothing Could have given" them "a more Pleasing & Compleat Satisfaction" than to have

confirmation from their Lordships' own hands that they looked upon the assembly's "Just Endeavours to Support the Authority" of Baltimore's courts and to protect the persons of his ministers as a manifest evidence of the assembly's approbation of Baltimore's dominion over the province. They thought themselves very happy that they had been able to express such a due sense of their duty that Baltimore and Guilford had understood their intentions and had declared that their efforts had strengthened "the Liberties & Properties of the Good People" of the province.

Such free declarations of their Lordships convinced the members of the assembly that Baltimore and Guilford had disallowed the act against Macnemara only "out of a Tender Regard to the Preservation of the Rights & Libertys of an English Subject." Apparently oblivious to the obvious reflection on themselves for exhibiting their own lack of that tender regard by passing the act in the first place, just as the two houses were earlier in their separate responses to Hart,<sup>51</sup> they told their Lordships that that was a principle so just and so beneficent that it filled them "with Pleasure to foresee that Justice & Clemency" were likely to become the rule of the young Baltimore's government.

Parroting Hart in his message to the two houses at the beginning of the session, maintaining their determination never to mention Macnemara by name except in the acts against him, and, like the members of the Committee of Laws, conveniently forgetting that when Macnemara appeared before the upper house on 5 May 1718, only four days before the assembly passed the first act against him, the members of the upper house supported Hart even though he violated his instructions by refusing to make a proposal to Macnemara and thus all but guaranteed that he could not submit, the members of the assembly pointed out in a most humble manner that "the particular person mentioned in that Act" never did apply to the upper house for a hearing

before the assembly passed the act against him, even though his treatment before the upper house when he refused “to Make such [a] Reasonable Acknowledgment of his indecent and Insolent Behaviour” toward Hart in the chancery court and elsewhere, as their Lordships had required of him in their letter to him, should have given him “very Little Reason to Apprehend any Hardships there.” Macnemara’s failure to ask for a hearing before the upper house gave the members of the assembly “a great Deal of Reason to believe” that only Macnemara’s subtle insinuations and false allegations had caused the three English lawyers — “those Eminent Gentlemen of the Law” — to arrive at their opinions on the act of 1718.

The members of the assembly did not take their Lordships’ objection that the first act against Macnemara was an *ex post facto* law very seriously. They humbly submitted to their Lordships’ opinion that *ex post facto* laws, if not unjust, were “at Least Deemed Severe.” Still refusing to dignify Macnemara by mentioning his name, however, they insisted that “Such was the Case of that Particular Person that frequent Excuses Brought on Repeated Transgressions” and that “pardoning Instead of Humbling him made him so much the more Insolent.” Therefore the assembly, “seeing all Authority of Government Slighted and Contemned,” took the affair in hand and passed the act disabling him from practicing law in Maryland as the only effectual discouragement of such behavior in the future.

Apparently satisfied that they had sufficiently demolished Baltimore’s and Guilford’s objection to *ex post facto* laws, ignoring their Lordships’ hope that a general act would make it unnecessary to pass an act against any particular person, and pretending that their Lordships’ only significant objection to the disbarment of Macnemara was that the assembly had tacked the disbarment to the general act for the better support of magistrates, the members of the assembly told Baltimore and Guil-

ford that they had so just a deference to their Lordships' opinions that since their Lordships disapproved of "the manner of tacking any Particular Clause to a Generall Bill," they had "now proceeded to remedy the Great Evil by two distinct Acts."

After a long passage in which they expressed the hope that Baltimore and Guilford would be able to convince parliament to give Maryland part of the duty of one penny per pound on tobacco transported from plantation to plantation to improve education in the province,<sup>52</sup> the members of the two houses assured their Lordships that they would always act in the true interest of the province. They could not find words to express their "Satisfaction at the Intire Confidence" their Lordships had declared they had in their "Great Councill Convened in Generall Assembly," and they promised that they would make it their chief endeavor "To Cultivate this good understanding by all the measures of Duty and Submission" that would be most consistent with the true interest of Maryland. They promised themselves that their Lordships would also always have at heart that true interest, which included the Protestant establishment, the true foundation of the province.

Finally, the members of the two houses expressed their gratitude for their Lordships' assurance that they would maintain the Protestant establishment in the province.<sup>53</sup> Parroting Baltimore and Guilford as they had parroted Hart, they begged leave to applaud their Lordships' "Tender Compassion to Consciences truly Scrupulous," which made them "true Sonns of that Holy & Pious Church" that practiced charity toward all mankind. They assured their Lordships that their own inclinations as well as their principles led them to the same compassion for all people of such scrupulous consciences who behaved themselves inoffensively and who did not try to pervert "his Majestys Protestant Subjects to the Superstition of the Church of Rome."

The members of the assembly flattered themselves that if any Catholics complained of persecution just because the assembly would not pass “Particular Laws in their favour to . . . skreen them against the Laws of Great Brittain” their Lordships would have such a just regard for the sincerity of the members of the two houses that they would not allow “the Suggestions or Insinuations of any Such Evil minded” people to lessen the confidence that was so happily established between their Lordships and their “Great Council . . . Convened in a Generall Assembly.” Their hearty desire was that the present good understanding between their Lordships and the two houses would long continue.<sup>54</sup>

The members of the assembly gave no hint that Baltimore’s and Guilford’s recommendation that they pass no law against a specific individual had registered in their minds at all. Their attitude was one of defiance couched in obsequious courtesy. They could pass laws disbarring Macnemara as fast as the proprietor could disallow them. Macnemara would be unable to practice law until the disallowance arrived in the province, and once it arrived they could soon pass a new law. That would mean that he could never practice law in the province at all.

Macnemara died before Baltimore could either approve or disallow the act of 1719 to disbar him,<sup>55</sup> but his enemies would not let him rest. John Hart could not forget him,<sup>56</sup> and as late as 22 April 1720, eight months after Macnemara died, the two houses of the assembly were still trying to justify themselves not only for passing the private act against Macnemara in their session of 1718 but also for ignoring their Lordships’ instructions by passing another private act against him in their session of 1719, two-and-a-half months before Macnemara died.<sup>57</sup>

The two houses assured their Lordships that they considered themselves obliged

to follow, as near as they could, “the Example of Great Britain in all . . . [of their] Parliamentary Proceedings.” They acknowledged their Lordships’ great favor in advising them of the British practice concerning private acts, but “with all Deference to that happy Constitution” and with submission to their Lordships’ observations on it, they also had to acknowledge that the infancy of the province did not permit “such An Extensive Administration in the Ordinary Courts of Justice” as existed in Britain. In some particular and extraordinary cases, therefore, “the Assistance of the Legislature . . . [might] be Absolutely necessary” to compensate for the defects of the courts.<sup>58</sup> Thus the members of the assembly were assuring their Lordships that not only were they unapologetic about their defying them in the past but also that they would not hesitate to defy them in the future.

And when Macnemara died the clerk of the prerogative office or his deputy wrote in the record: “a most Turbulent and Seditious person.”<sup>59</sup>

## *Chapter 13*

### *Disbarred Once More, 1719*

<sup>1</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXXIII, 379. For the delegates' response to Hart on 19 May 1719, see Chapter 12, "Reinstatement and Outrage, 1719," after Note 29-41.

<sup>2</sup> *Md. Arch.*, XXXIII, 425-430.

<sup>3</sup> *Ibid.*, pp. 341, 423.

<sup>4</sup> The members of the Committee of Laws were Thomas Bordley of Annapolis, James Stoddart and Philip Lee of Prince George's County, John Parry of Charles County, Edmond Benson of Anne Arundel County, James Smith of Kent County, and Roger Woolford of Dorchester County. *Ibid.*, pp. 373, 374. On 28 May 1719 John Brannock of Dorchester County was added to the Committee of Laws for the writing of the bill against the cutting of entails (*ibid.*, p. 405), and on 3 May George Dashiell of Somerset County was added for the writing of the supplementary bill to the act for the speedy recovery of small debts. *Ibid.*, p. 414.

James Stoddart was a non-quorum justice of the provincial court; John Parry was chief justice of Charles County; Edmond Benson was a non-quorum justice of Anne Arundel County; Roger Woolford was a non-quorum justice of Dorchester County; Philip Lee a non-quorum justice of Prince George's County; and as an alderman of Annapolis Thomas Bordley sat on the mayor's court and the court of

hustings. Thus James Smith was the only member of the Committee who was not a justice.

For the sources of this information, see Note 20 below.

<sup>5</sup> *Md. Arch.*, XXXIII, 381.

<sup>6</sup> For barristers, see Chapter 12, “Reinstatement and Outrage, 1719,” Notes 31-34.

<sup>7</sup> *Md. Arch.*, XXXIII, 305, 375.

<sup>8</sup> *Ibid.*, p. 426.

<sup>9</sup> For references to the lower house as the assembly in early eighteenth-century Maryland, see, for example, *Md. Arch.*, XXIX, 96, 104, 152, 183, 183-184.

<sup>10</sup> *Ibid.*, XXXIII, 270-271.

<sup>11</sup> *Ibid.*, pp. 189-190, 191-192, 197, 272, 273; Chapter 11, “Disbarred Again, 1718,” at Note 91.

<sup>12</sup> *Md. Arch.*, XXXIII, 314-315, 382; Chapter 12, “Reinstatement and Outrage, 1719,” at Notes 29-35.

<sup>13</sup> If Macnemara had been given a hearing, the members of the Committee of Laws thought, “it ought not to have been Ex Parte,” which means “On one side only; by or for one party; done for, in behalf of, or on the application of, one party only.” Henry Campbell Black, *Black’s Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul, 1990), p. 576.

<sup>14</sup> The members of the upper house had no choice but to support Hart if they wanted to remain in the upper house: they were also members of the council, and Hart could remove them whenever he chose.

<sup>15</sup> *Md. Arch.*, XXXIII, 168-169; Chapter 11, “Disbarred Again, 1718,” at Notes



51-57.

<sup>16</sup> Here the members of the Committee of Laws refer to “Judges,” not just to the justices of the provincial court.

<sup>17</sup> Actually before 1718 Macnemara had been suspended from the practice of law three times. See Chapter 11, “Disbarred Again, 1718,” Note 67.

<sup>18</sup> The reference of the Committee of Laws to Moore’s *Reports*, page 827, can be found in Sir Francis Moore, *Cases Collect and Report per Sir Fra. Moore, Chevalier, Serjeant del Ley* (2nd edition; London: Printed for G. Pawlet, 1688), in *The English Reports* (176 vols.; London: Stevens and Sons, Limited, 1900-1930), LXXII, 931-932.

The date was 16 November 1616, and the Lord Chancellor was Thomas Egerton, Lord Ellesmere. J. S. Cockburn, *A History of the English Assizes, 1558-1714* (Cambridge: Cambridge University Press, 1972), p. 230; Theodore F. T. Plucknett, *A Concise History of the Common Law* (5th edition; London: Butterworth & Co. (Publishers) Ltd., 1956), pp. 697-699.

<sup>19</sup> The act against Macnemara was, in fact, not only an *ex post facto* law but also a bill of attainder, since the assembly was punishing him for his past behavior without the benefit of a trial. Even when punishing someone, the members of the Committee of Laws were able to say, the legislature did not have to be as specific as a court of law. Of course that is a characteristic of a bill of attainder.

<sup>20</sup> At least twenty-five of the members of the lower house in the assembly that met from 14 May until 6 June 1719 were county justices, one was an alderman of Annapolis and therefore a member of the mayor’s court and court of hustings, and two were provincial justices, for a total of twenty-eight. Four members of the council and therefore of the upper house were also provincial justices. Since Macnemara

practiced in Anne Arundel, Baltimore, Calvert, and Prince George's counties and in the provincial court, at least eight of the justices who were also delegates sat on courts in which he practiced.

Delegates to the lower house in 1719 who were also county justices:

Anne Arundel County

Daniel Mariarte	Chief Justice
Richard Warfield	Quorum justice
Edmond Benson	Non-quorum justice

Baltimore County

James Maxwell	Chief Justice
James Phillips	Quorum justice
Richard Colegate	Quorum justice
Francis Dallahide	Probably quorum justice Fourth of ten

Calvert County

None

Cecil County

Ephraim Augustine Herman	Non-quorum justice
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Charles County

John Parry	Chief Justice
Robert Hanson	Quorum justice
John Fendall	Non-quorum justice
George Dent	Non-quorum justice

Dorchester County

Roger Woolford	Non-quorum justice
John Rider	Non-quorum justice

Kent County

Nathaniel Hynson	Chief Justice
Lambert Wilmer	Non-quorum justice

Prince George's County

Philip Lee	Non-quorum justice
Ralph Crabb	Non-quorum justice (?)*

## Queen Anne's County

Thomas Fisher	Quorum justice
Charles Wright	Non-quorum justice
James Earle Sr.	Non-quorum justice
William Turbutt	Non-quorum justice

## Somerset County

None

## St. Mary's County

Henry Peregrine Jowles	Quorum justice
Thomas Trueman Greenfield	Non-quorum justice**

## Talbot County

Robert Ungle	Chief Justice	Speaker
James Lloyd	Quorum justice	
Thomas Emerson	Quorum justice	

## Delegate on the mayor's court and court of hustings:

Thomas Bordley	Annapolis	Alderman
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## Delegates who were provincial justices:

James Stoddart	Prince George's	Non-quorum justice
John Mackall	Calvert	Non-quorum justice

## Members of the upper house who were provincial justices:

William Holland	Chief Justice
Samuel Young	Quorum justice
Thomas Addison	Quorum justice
Richard Tilghman	Quorum justice

\* Papenfuse, Day, Jordan, and Stiverson (full citation below) have Ralph Crabb placed on the Prince George's County Court in 1719. Since I am not sure that he was on the court by the time this assembly met, I have not included him with the twenty-eight delegates who were justices.

\*\* Papenfuse, Day, Jordan, and Stiverson have Thomas Trueman Greenfield as a non-quorum justice St. Mary's County from 1708, "probably continuously to

1733, except for the year he served as sheriff" (1721) to 1727, when he became a quorum justice until his death in 1733. He is included in a provincial court commission dated 14 July 1718 (Provincial Court Judgment Record, Liber P. L., No. 4, pp. 91-92), and on another dated 16 May 1726 (*ibid.*, Liber W. G., No. 2, p. 396), though apparently he never served. I have counted him as a justice of the St. Mary's County court.

Sources:

Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 43, and appropriate biographies;

Anne Arundel County Court Judgment Record, Liber R. C., pp. 198-200;

Baltimore County Court Proceedings, Liber A, p. 122;

Cecil County Land Record, Liber J. D., No. 3, pp. 13-17;

Charles County Court Record, Liber I, No. 2, pp. 98-99;

Kent County Court Proceedings, Liber J. S., No. X, pp. 60-63;

Provincial Court Judgment Record, Liber P. L., No. 4, pp. 91-92;

Queen Anne's County Court Judgment Record, 1718-1719, pp. 1-2;

Second Charter of Annapolis, in Chancery Record 2, pp. 597, 599, 601-602, also printed in Elihu S. Riley, "*The Ancient City.*" *A History of Annapolis, in Maryland, 1649-1887* (Annapolis: Record Printing Office, 1887), pp. 88, 88-89, 90-91;

Talbot County Court Judgment Record, Liber F. T., No. 2, pp. 182-183.

<sup>21</sup> *Md. Arch.*, XXXIII, 426-430.

<sup>22</sup> *Ibid.*, p. 397. On Tuesday, 19 May 1719, the delegates ordered the Commit-

tee of Laws to draw up a report on the opinions of the three English lawyers (*ibid.*, p. 379); on Friday, 22 May, the Committee had its report ready (*ibid.*, p. 426); on Monday, 25 May, the delegates ordered the Committee of Laws to draw up a bill on Macnemara (*ibid.*, p. 397); on Tuesday, 26 May, the delegates read the bill against Macnemara for the first and second times (*ibid.*, pp. 325, 402); and on Wednesday, 3 June, the delegates considered the report and accepted it. *Ibid.*, pp. 425-430.

<sup>23</sup> *Ibid.*, pp. 313-317, 381-385.

<sup>24</sup> The act for the better support of the magistrates is only fifty-two printed lines long (*ibid.*, pp. 461-463), while the new act against Macnemara is 104 lines long in smaller print. *Ibid.*, XXXVI, 528-530.

<sup>25</sup> *Ibid.*, XXXIII, 324, 402.

<sup>26</sup> *Ibid.*, pp. 325, 402.

<sup>27</sup> *Ibid.*, p. 324.

<sup>28</sup> *Ibid.*, p. 325.

<sup>29</sup> *Ibid.*, pp. 326-327, 411.

<sup>30</sup> By the first amendment of the upper house the assembly added that the act would apply to “all Ministerial Officers, or other Persons” as well as to attorneys. By the second it provided suspension of the ill-behaved attorney for a time or for life as an alternative to a fine, and by the third it provided that the fine for the attorney who was not suspended and for “Ministerial Officers, or other Persons” who misbehaved themselves in court would not exceed four thousand pounds of tobacco “in the superior Courts” and two thousand pounds of tobacco in the county courts for each offense. The “other Persons” mentioned in this act were officials. *Ibid.*, pp. 326, 404. There was a separate provision for ordinary people. See Note 34 below.

Since we do not have the earlier draft of the bill, we do not know how those

penalties compare to those mentioned in the earlier draft. For the wording of the law, see 1719, c. 4, *Md. Arch.*, XXXIII, 462.

<sup>31</sup> *Md. Arch.*, XXXIII, 405.

<sup>32</sup> *Ibid.*, pp. 326-327, 411.

<sup>33</sup> *Ibid.*, p. 408.

<sup>34</sup> *Ibid.*, pp. 330, 412; 1719, c. 4, *Md. Arch.*, XXXIII, 461-463. By this act the assembly required all magistrates

to observe the Demeanour of all Practitioners of the Law, before them, as well as all Ministerial Officers, or other Persons who shall use any undecent Liberties to the lessening [of] the Grandeur and Authority of their respective Courts, and to discountenance and punish the same, according to the Nature of the Offence, either by suspending such Practitioner of the Law from their Practice, Perpetually, or for a Time, or to punish such Practitioners, or Ministerial Officers, or other Persons, by Fine, at the Discretion of such Court before whom such Offence shall be committed, not exceeding Four Thousand Pounds of Tobacco in the superior Courts, nor Two Thousand Pounds of Tobacco in the several County Courts within this Province, on each Offender, for any one Offence.

The non-official person who behaved indecently toward the justices or who “contemn[ed] their Authority when lawfully required to assist them” would be subject to a fine not exceeding one thousand pounds of tobacco, imprisonment of not more than two days, or sitting in the stocks for not more than two hours.

<sup>35</sup> Referring to John Hart’s warning Maurice Birchfield against appointing Macnemara to the collectorship of Patuxent, the upper house added “Which his Excy thought himself Indispensibly [*sic*] Obligated to do by his Majesties Royall Instruction relating to the Offices of the Customs within this Province.” *Md. Arch.*, XXXIII, 336, 417. For the wording in the law, see 1719. c. 17, *Md. Arch.*, XXXVI, 528.

Macnemara was never appointed collector of Patuxent. Hart did appoint him

naval officer of Patuxent, at the insistence of Baltimore and Guilford (*Md. Arch.*, XXXIII, 170-171; Chapter 7, “Respectability, 1713-1719,” at Notes 54-58), and while he was serving in that office, from mid-summer of 1717 until his death late in August or early in September of 1719, first Thomas Fell and then Colonel John Rousby served as collectors of Patuxent. Donnell M. Owings, *His Lordship’s Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), pp. 159, 180.

<sup>36</sup> See Chapter 9, “Harassment by Indictment, 1712-1719.”

<sup>37</sup> *Md. Arch.*, XXXIII, 336, 417-418. The wording of the two houses varies here. The upper house: “As by the said Severall Indictments annexed may more *at Large* Appear.” The lower house: “As by the said Severall Indictments Annexed may more *fully* Appear.” Emphasis added. The wording of the lower house is in the act. 1719, c. 17, *Md. Arch.*, XXXVI, 529-530.

<sup>38</sup> *Md. Arch.*, XXXIII, 418.

<sup>39</sup> *Ibid.*, pp. 341, 423. Whether the delegates passed the bill against Macnemara unanimously does not appear. They passed the bill on its second reading only by a majority (*ibid.*, pp. 325, 402), but the record says only that the lower house assented to the engrossed bill. *Ibid.*, pp. 341, 423.

<sup>40</sup> *Ibid.*, pp. 341, 431.

<sup>41</sup> *Ibid.*, pp. 360, 361, 456, 457.

<sup>42</sup> Hart was in Cecil County when the guns were fired on 10 June 1716. *Ibid.*, XXX, 372.

<sup>43</sup> Chancery Record 3, p. 416.

<sup>44</sup> The assembly says that grand juries returned all four of the indictments in 1718 (1719, c. 17, *Md. Arch.*, XXXVI, 529), but two of the indictments were from

the provincial court for September of 1717, one from the Anne Arundel County court for June of 1718, and one from the provincial court for July of 1718. See Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 89-94, 95-100, 115-118, 129-130.

<sup>45</sup> *Md. Arch.*, XXXIII, 171-172; 1719, c. 17, *Md. Arch.*, XXXVI, 528-534.

<sup>46</sup> 1719, c. 17, *Md. Arch.*, XXXVI, 528-530.

Saving to the said Macnamara a Liberty to finish all such Actions as are now depending, wherein it appears by Record he is Actually concerned for any Person or Persons, on behaving himself decently, Except in the Chancery Court, wherein he has been already suspended in all Cases, save those that relate to the Crown, which Cases relating to the Crown the said Macnamara is not intended hereby to be debarred or disabled from prosecuting, if those that are entrusted think fit to Employ him therein.

<sup>47</sup> *Md. Arch.*, XXXIII, 425-430.

<sup>48</sup> *Ibid.*, pp. 302-303, 372.

<sup>49</sup> See Chapter 7, “Respectability, 1713-1719,” Note 86.

<sup>50</sup> See Chapter 9, “Harassment by Indictment, 1712-1719,” Note 143.

<sup>51</sup> *Md. Arch.*, XXXIII, 308-311, 313-317, 381-385; Chapter 12, “Reinstatement and Outrage, 1719,” after Note 28-36.

<sup>52</sup> By the Plantation Duty Act of 1673 parliament established a duty of one penny per pound on tobacco shipped from one colony to another. 25 Charles II, c. 7, paragraph 2, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Benthams and Others, 1762-1809), VIII, 397-400. When the College of William and Mary was founded in 1693, William and Mary assigned the penny per pound to it (Charter of the College of William and Mary, Paragraph XV, in Henry Hartwell, James Blair, and Edward Chilton, *The Present State of Virginia, and the College*, ed. Hunter Dickinson Farish (Dominion Books edition; Charlottesville: The



University Press of Virginia, 1964), pp. 87-90; Oliver Perry Chitwood, *A History of Colonial America* (3rd edition; New York: Harper & Row, Publishers, 1948), p. 466), and now the members of the assembly hoped that Baltimore and Guilford would be able to convince King George to assign the penny per pound that was collected in Maryland to that province for the improvement of education there “after the Determination [expiration] of the Grant to the Governour and trustees of the Colledge of Virginia.”

The wording of the members of the assembly makes it sound as though they thought that William and Mary had granted the penny per pound to the College of William and Mary only for a determined period, but they had granted it forever. Charter of the College of William and Mary, Paragraph XV.

<sup>53</sup> See Chapter 12, “Reinstatement and Outrage, 1719,” at Note 29.

<sup>54</sup> *Md. Arch.*, XXXIII, 352-355, 450-453.

<sup>55</sup> Provincial Court Judgment Record, Liber W. G., No. 1, p. 31. Aubrey C. Land says that Macnemara died suddenly. Aubrey C. Land, *The Dulanys of Maryland: A Biographical Study of Daniel Dulany, the Elder (1685-1753) and Daniel Dulany, the Younger (1722-1797)* (Baltimore: Maryland Historical Society, 1955; reprinted Baltimore: The Johns Hopkins Press, 1968), p. 41. He cites no source for his information, though later in the paragraph he writes about Macnemara’s will, still with no citation. The “official record” of Macnemara’s will, which Land writes about here, says nothing about Macnemara’s having died suddenly. Prerogative Office, Liber T. P., No. 24, p. 54.

<sup>56</sup> See Chapter 14, “Gone But Not Forgotten, 1720,” after Note 6-9, after Note 21-24.

<sup>57</sup> And all of this even though in their latest message Baltimore and Guilford

said nothing about Macnemara or his last disbarment. *Md. Arch.*, XXXIII, 542-543, 629-630.

<sup>58</sup> *Ibid.*, pp. 558, 641.

<sup>59</sup> Prerogative Office, Liber 24, p. 54. Aubrey C. Land quotes the wording as “a Most Troublesome and Seditious Person.” Land, *The Dulanys of Maryland*, p. 41. Alan F. Day has it right: “a most Turbulent and Seditious person.” Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), pp. 515-516.

The clerk of the prerogative office was Philip Hammond. Owings, *His Lordship's Patronage*, p. 144.

*Chapter 14*  
*Gone But Not Forgotten, 1720*

John Hart could accept Baltimore's and Guilford's disallowance of the act of 1718 by which the assembly disbarred Thomas Macnemara, for the reasons they had given,<sup>1</sup> but he could not accept their Lordships' ordering him to restore Macnemara to his practice in chancery without making any submission to him. That was just too much for this proud and arrogant man.

No doubt smarting from his futile and unpleasant experience with Hart and the upper house on 5 May 1718,<sup>2</sup> Macnemara had circumvented Hart by making his submission directly to Baltimore and Guilford during his trip to England in 1718-1719. In an order to Hart dated 26 February 1718/19 their Lordships directed that since Macnemara had recently made a satisfactory submission to Baltimore they thought fit that his suspension should be removed, and therefore Hart should discharge the order of suspension forthwith.<sup>3</sup> The assembly passed the second act against Macnemara in June of 1719;<sup>4</sup> sometime between 11 August and 8 September Macnemara died;<sup>5</sup> by 27 February 1719/20 Hart had found out about their Lordships' order; and on that date he resigned as chancellor.<sup>6</sup>

In a speech to his council on that same day Hart confessed his surprise that Baltimore and Guilford would "by a formal Precept" restore Macnemara to his practice before the chancery court "without [his] making his due Submission" to Hart,

whom Macnemara had personally affronted while he was representing the proprietor. He was surprised because the precept, “or order or whatever denomination it may go under[,] for it . . . [was] a novelty,” contradicted the sundry letters in which Baltimore and Guilford had approved, “even with Encomiums,” of what he had done and in which they had stated that Macnemara should not to be restored to his practice in chancery until he made his due submission to Hart. That they would restore him to his practice in chancery without so much as a letter to Hart, “on an Occasion which surely was not Trifling,” did indeed amaze him, and it did not bode well for the future of the courts.<sup>7</sup> “Certainly the Support of the Magistrates” would deserve the attention of the council.

Macnemara had affronted not only Hart but other officials as well. What public officials, Hart asked rhetorically, had “that man of Infamous and Insolent memory” not affronted. That he had affronted Hart in the execution of his office was admitted. These were only virtual affronts to the proprietor, but they were actual affronts to Hart. Macnemara’s submission to Baltimore and Guilford no doubt sufficiently satisfied them for the affronts to them, but though Hart had desired nothing more than a submission suitable to the dignity of his position “there was no Reparation intended” him.

Instead, Hart complained, Baltimore and Guilford had imposed the offender on him in the chancery court, to practice before him in contempt of his authority<sup>8</sup> and without leaving him “any Awfull Power to Influence him into a decent Deportment.” Without that power, Hart thought he “must observe in the Comon [*sic*] Voice of the Country,” he would not have been able to administer justice against the inclinations or the interests of Macnemara’s clients.

Hart concluded with a warning and the announcement of his resignation as

chancellor. It was true that Macnemara had been “removed by the impartial hand of Providence” and therefore would never be able to cause any further disturbance, but other lawyers — “and some there . . . [were] of his Kidney vehement Espousers of a Popish Faction” — would know that Macnemara had got off so cheaply and, following his example, might treat Hart with such indecencies as were “inconsistent with the Grandeur of even an Inferiour Court.” Thus Macnemara’s reinstatement threatened further affronts to him if he continued to act as chancellor, and therefore to avoid in the future such affronts in a public character as he would never bear in a private capacity he had decided to appoint Colonel William Holland chancellor in his place. Accordingly he had delivered the Great Seal of the province to Holland. He had the consolation of knowing that as chancellor he had never violated his conscience with partiality or corruption, and he thanked the great judge of mankind for that.<sup>9</sup>

Since the records of the council for this period are incomplete there is no way to know how it responded to Hart’s speech,<sup>10</sup> though in a message to the lower house on 20 April 1720 the upper house did refer to what it called Macnemara’s pernicious principles and practices.<sup>11</sup>

Hart had a second complaint against their Lordships. On 6 June 1719 he had prorogued the assembly to 4 August 1719,<sup>12</sup> but Baltimore and Guilford had anticipated him. Possibly convinced that the less the assembly met while Hart remained in the province the less damage he could do, in Orders and Instructions dated 23 March 1718/19 they ordered him to prorogue the assembly “to Some day” in April of 1720.<sup>13</sup>

By the time the assembly met on 5 April 1720 Hart had only a short time left

in the province. By an order of 19 March 1718/19 the king gave him permission to return to England for a year to try to recover his health,<sup>14</sup> and in the Orders and Instructions dated 23 March 1718/19 Baltimore and Guilford gave theirs, with instructions to leave the province, if possible, within three months of his receiving the order.<sup>15</sup> When the three months expired on 26 November 1719,<sup>16</sup> however, Hart still in the province. Finally in an instruction dated 30 December 1719 Baltimore and Guilford, clearly disgusted with Hart, “positively Command[ed] and require[d]” him to leave Maryland no later than sometime in May of 1720,<sup>17</sup> and in February of 1719/20 Baltimore commissioned his cousin Captain Charles Calvert to replace Hart as governor.<sup>18</sup>

Finally, however reluctantly, Hart did leave. While originally he apparently had planned to be gone only for a year to recover his health — unless that claim was designed only to put his departure in a more favorable light —, he would never return to the province. In the summer of 1721 he was commissioned governor of the Leeward Islands.<sup>19</sup>

Although Hart was unable to hide his resentment toward Baltimore and Guilford for ordering him to prorogue the assembly to a later date than the one to which he had prorogued it himself and for reinstating Macnemara in his practice in chancery without a satisfactory submission to him, in his opening speech to the assembly on 6 April 1720 he put the best face he could on what he considered these encroachments on his authority. Then, wasting very little time on the business of the province, he indulged himself in his preoccupation with the Catholics.<sup>20</sup> Since this would be his last speech to the assembly, it would be his last chance to justify himself, and he reviewed his relations with the Catholics since Baltimore got his province back in

May of 1715.<sup>21</sup>

In the middle of his long assault on the Catholics Hart got his licks in against Macnemara. He was well informed, he told the two houses, that the Catholics had raised enough money to send emissaries to England to make good their claim to the right to hold office in the province and to try to get him removed as governor “as a Main Obstacle to their Illegal Practices.” Thomas Macnemara, as Hart makes clear later in this paragraph, was one of those emissaries.<sup>22</sup> Then, obviously referring to Macnemara, Hart added that “so sure was the Faction of their game” that it openly threatened his ruin, and “one of their accomplices (whom the Pleasure of Providence . . . [had] since removed to another Life) went down on his Knees and with horrid Execrations” said that he had no doubt that he would see Hart “as fast in Prison as ever he was (who had been so for murder and other Crimes)” and Hart’s “Innocent Children set a begging.”

Of course Macnemara had never been in prison for murder, and Hart must have known it. Macnemara had been *charged* with murder, but in spite of the enthusiastic efforts of the provincial justices to get him hanged the petit jury stubbornly refused to find him guilty of anything more serious than chance-medley. The justices on their own illegally changed his crime to manslaughter and ordered him branded on the hand after he pleaded benefit of clergy.<sup>23</sup>

“Truly this unhappy man,” Hart continued, with the aid of the Catholic faction “did all that a base mind could perpetrate” to destroy Hart’s character and fortune. Since Macnemara and the Papists “could alledge nothing materiall” to accomplish his removal, which they had been attempting for some years past, and since in their view his greatest crime had been his defense of the laws of the province, Providence had “hitherto preserved . . . [him] from being wholly Offered up a Sacrifice to their

Revenge.”<sup>24</sup>

Apparently satisfied that he had sufficiently discredited Macnemara, Hart continued his breathless assault on the Catholics, now proving to his own satisfaction that Maryland had never been intended as a refuge for them. Finally he told the members of the assembly that he had several other matters for their consideration. He would communicate with them on those issues later, but in the meantime he earnestly recommended unanimity and dispatch in their proceedings. Whatever the vain hopes of others, he had no doubt that they would make it evident to posterity that they were “Good Subjects good Protestants and Lovers of . . . [their] Country.”<sup>25</sup>

In their response to Hart the delegates, continuing their flattery to the end, considered it their indispensable duty to convey to him their thankful acknowledgment of the repeated instances in which from the time of his first arrival in the province he had illustrated his “great Care and Concern for the good Government and welfare” of the province and then devoted almost half of their message to a lengthy endorsement of his attack on the Catholics.<sup>26</sup> They did, however, have the good grace not explicitly to mention the dead Macnemara, though they might have included him among those they called the unwearied and restless Papists and their adherents who caused Hart disquiet and uneasiness in his administration. Parroting Hart, they hoped that their unanimity and speedy dispatch of the proceedings of this session would be “a Sufficient Evidence not only to the present age but [also] to posterity” that they were “good Subjects good protestants and hearty Lovers” of their country.<sup>27</sup>

That afternoon Hart thanked the delegates for their very acceptable address. He considered it a great felicity that after his many years in the province as governor the delegates were satisfied with his administration and he was esteemed by the best and “much the greatest number of his Majestys Loyall Protestant Subjects” there. Then,



never hinting that Baltimore and Guilford had ordered him to leave Maryland no later than sometime the next month,<sup>28</sup> he told the delegates that he intended “soon to make the proper use of his Sacred Majesty’s Licence” to return to England to recover his health. There, after giving an account of his own conduct and of the misconduct of others, he would resign as governor. He would “be a Suppliant for . . . [his] Quietus, from . . . [his] Station,” which he did not consider consistent with the character that he had acquired “by the permission of Providence and [the] favour of the Crown” and that he considered it incumbent on him to try to maintain. Whatever condition of life it might please God to allot him in the future, his “Zealous Assiduous and Affectionate Application to promote the Welfare and prosperity” of Maryland to the utmost of his capacity would never be wanting.<sup>29</sup>

Also continuing their flattery to the end, the members of the upper house most heartily thanked Hart for his most conspicuous concern for the welfare of Maryland. Then, after a lengthy assurance of their support in Hart’s attacks on the Catholics,<sup>30</sup> they, like the delegates, referred to Macnemara only obliquely when they expressed their concern that the machinations of the dissatisfied men who affronted and spurned Hart and others in authority should so far influence him as even to incline him to leave the province. They hoped that his justice and fidelity would be so obvious to the king and the proprietor that they would still have the pleasure of seeing those two faithfully served and the province happily governed by the continuance of his administration.<sup>31</sup>

In his response to the upper house the next morning Hart with a grateful mind acknowledged that it was in good measure because of their just, steady, and “well Concerted Councils” that his administration had met with the applause that they were pleased to mention in their address to him. For that approval as well as for the

many repeated instances of their esteem he expressed his sincere and hearty thanks, and he assured them that he would always preserve their address as an honor to his family.

Then Hart expressed his regret at having to leave Maryland. More straightforward than he had been with the delegates, or with the members of the upper house when he told them on 10 September 1719 that he would leave the province with joy,<sup>32</sup> he assured them now that he was “farr from having Inclinations to leave . . . by a Voluntary Choice,” and he accepted the concern that they had shown about his leaving as another endearing mark of their good will toward him. He set too high a value on their opinion to forfeit it by lessening the honor that was due to the dignity of their governor by preferring his interest to his integrity.<sup>33</sup>

While the messages of the delegates to Hart make it appear that relations between them were very congenial, the relations were far from rosy. If Baltimore and Guilford were becoming increasingly impatient with Hart, the delegates had also had more than enough of him. During their session in April of 1720 they fought with him over his income during his impending absence from the province,<sup>34</sup> and when during their session in October of 1720 they defended Thomas Brooke against Baltimore’s and Guilford’s complaint that Brooke, the president of the council, had been too hasty in qualifying himself for the administration of the government in Hart’s absence, they reveal that their previous flattery must have been only a matter of convention.

When in a letter to the assembly that the chancellor, still William Holland,<sup>35</sup> read to the two houses at the opening of the new session on 12 October 1720 because Governor Charles Calvert was too ill to appear, Baltimore and Guilford expressed

their disapproval of Thomas Brooke's "Late hasty Proceedings,"<sup>36</sup> the delegates in their response to Baltimore alone, since he had come of age a month earlier,<sup>37</sup> defended Brooke and make obvious their distrust of Hart. In justice to Brooke's known character, they told Baltimore, they could not be unconcerned at Baltimore's disapproval of "so hasty Proceedings," as Baltimore and Guilford were "pleased to Stile them." They took

leave to Justifie . . . [Brooke's] Conduct so far as to Say that had he not taken that Early Care to qualifie himself to take upon him the Government it would have been a good Plea for Gov<sup>r</sup> Hart to have refused the Delivery

of the government to him at the time that Baltimore and Guilford had specified. They joined Baltimore in a firm belief that Brooke "had no private Views to the Dis-services" of either Baltimore or the people of Maryland.<sup>38</sup>

Clearly the delegates, well aware of John Hart's character and ambition, wanted him out of Maryland as soon as possible and did not trust him to leave the province when Baltimore and Guilford ordered him to. Possibly still a bit embarrassed by their part in Hart's long battle with Macnemara, which at least some of them in their more honest moments must have realized was unjust and even vicious,<sup>39</sup> and possibly tired also of having to support Hart in his disruptive attacks on the Catholics, they did not want to be stuck with him any longer than they had to be. They were looking forward to some peace after the conflicts during Hart's administration.<sup>40</sup>

Thus both Thomas Macnemara and John Hart were gone. Macnemara was dead; Hart would become governor of the Leeward Islands; and soon after Hart left the province Charles Carroll, whom along with Macnemara Hart had blamed for most of his conflicts with the Catholics, also died.<sup>41</sup> The people of Maryland would look

forward to a more peaceful time. And according to Charles Calvert they got it. In his address to the assembly at the opening of the session on 19 July 1721 he expressed his pleasure that “those little heats” that had recently disturbed the province were now happily at an end. That gave him hope that the people of the province would be united for the common welfare. His greatest happiness during his administration would be in the general good of the province, which he would always use his best endeavors to effect. He would consider the proprietor’s best friends those who would heartily join their endeavors with his to make Marylanders a united, happy people.<sup>42</sup>

**Chapter 14**  
***Gone But Not Forgotten, 1720***

<sup>1</sup> See Chapter 12, “Reinstatement and Outrage, 1719,” after Note 18-21.

<sup>2</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXXIII, 168-169.

<sup>3</sup> *Ibid.*, pp. 491-492, 584.

<sup>4</sup> See Chapter 13, “Disbarred Once More, 1719,” at Note 3.

<sup>5</sup> See Chapter 1, “Character,” Note 11; Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 132-140.

<sup>6</sup> Donnell M. Owings, *His Lordship’s Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), pp. 120, 124.

<sup>7</sup> Why Hart would say that their Lordships restored Macnemara to his practice in chancery without so much as a letter to Hart is unclear, since the order from them was directed to Hart. Apparently he meant that they did not send him any letter of explanation.

<sup>8</sup> Hart says “in despite of” his authority, but an archaic meaning of “despite” is “to treat with contempt.” *Webster’s Third New International Dictionary of the English Language Unabridged* (1981).

<sup>9</sup> *Md. Arch.*, XXXIII, 492-493, 584-585.

<sup>10</sup> *Ibid.*, XXV, 352ff.

<sup>11</sup> *Ibid.*, XXXIII, 538, 624.

<sup>12</sup> *Ibid.*, pp. 361-362, 458.

<sup>13</sup> *Ibid.*, XXV, 355; XXXIII, 478, 566-567, 604.

<sup>14</sup> *Ibid.*, XXV, 353; XXXIII, 497, 586-587, 603; The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXXI, No. 121 (19 March 1718/19), No. 143 (9 April 1719). For other references to the king's license for Hart to return to England for the recovery of his health, see *Md. Arch.*, XXXIII, 539, 552, 555, 626, 634-635, 638.

The king's license to Hart has not survived in the records of Maryland. The records of the council for 13 February 1715/16 through 10 September 1719 in the *Archives* come from the Calvert Papers (*Md. Arch.*, XXV, 326-358), and in brackets there it is noted that the license is "Entered at Large in the Council Proceedings." *Ibid.*, p. 353. Those proceedings of the council have disappeared — which is why those in the *Archives* come from the Calvert Papers —, and what is in brackets in the *Archives* also in brackets in Calvert Papers, No. 716. The date of the king's license, however, is mentioned in Baltimore's and Guilford's Orders and Instructions to Hart dated 23 March 1718/19. *Md. Arch.*, XXV, 353; XXXIII, 603.

<sup>15</sup> *Ibid.*, XXV, 353. Like the king's license, Baltimore's and Guilford's license for Hart to leave the province has not survived in the records of Maryland. It was written out in the Proceedings of the Council, but not in Calvert Papers, where again it is noted in brackets that "This is Entered at Large in the Council Proceedings." Calvert Papers, No. 716; *Md. Arch.*, XXV, 353.

Baltimore and Guilford included the license with their Orders and Instructions of 23 March 1718/19, but they do not mention its date. *Ibid.*, XXV, 353; XXXIII, 603. Presumably it also was dated 23 March 1718/19. The complete Orders and

Instructions of 23 March 1718/19 are written out in *ibid.*, XXV, 353-355, and XXXIII, 603-605.

With the Orders and Instructions of 23 March 1718/19 Baltimore and Guilford also included a letter to Hart, but it too has not survived. In brackets once more: “This Letter is Entered at Large in the Councill Proceedings.” Calvert Papers, No. 716; *Md. Arch.*, XXV, 352.

I point all of this out because until I saw the Calvert Papers the entry in the *Archives* confused me.

<sup>16</sup> *Md. Arch.*, XXV, 356.

<sup>17</sup> *Ibid.*, XXXIV, 9, 67. The complete Orders and Instructions of 30 December 1719 are written out in *Md. Arch.*, XXXIV, 8-9, 66-68.

<sup>18</sup> While Donnell M. Owings says that Baltimore commissioned Charles Calvert governor in February of 1719/20 (Owings, *His Lordship's Patronage*, p. 120), Clayton C. Hall, Bernard C. Steiner, and Samuel K. Dennis, in their Preface to Volume XXXIV of the *Archives*, follow Christopher Johnston in saying that Captain Charles Calvert was appointed governor of Maryland on 17 May 1720. *Md. Arch.*, XXXIV, ix. For Christopher Johnston's account, see “Notes,” *Maryland Historical Magazine*, I, No. 3 (September 1906), p. 289.

<sup>19</sup> TNA (PR0), *Calendar of State Papers: Colonial Series*, XXXII, Nos. 480, 485.I, 486, 489, 587, 617.

<sup>20</sup> Altogether Hart devoted 251 of the 331 printed lines of his speech to the Catholics, Charles Carroll, and Thomas Macnemara. That is 75.83%.

<sup>21</sup> Owings, *His Lordship's Patronage*, p. 114.

<sup>22</sup> *Md. Arch.*, XXXIII, 482, 571. For this effort to get Hart fired, see Chapter 1, “Character,” at Note 59; Chapter 7, “Respectability, 1713-1719,” at Notes 37-40;

Chapter 11, “Disbarred Again, 1718,” at Notes 3-7.

<sup>23</sup> For Macnemara’s and John Mitchell’s conviction of chance-medley in the death of Thomas Graham, see Chapter 5, “Railroading, 1710-1713,” at Notes 1-94, 105-115, 119-124.

<sup>24</sup> *Md. Arch.*, XXXIII, 482, 571.

<sup>25</sup> *Ibid.*, pp. 478-485, 566-574.

<sup>26</sup> The delegates devoted fifty of the 104 lines of their response to Hart to the Catholics. That is 48.08%.

<sup>27</sup> *Md. Arch.*, XXXIII, 494-496, 579-582.

<sup>28</sup> These orders do not appear in the records of the upper house and the lower house until 13 October 1720. *Md. Arch.*, XXXIV, 8-9, 67.

<sup>29</sup> *Ibid.*, XXXIII, 497, 586-587.

<sup>30</sup> The members of the upper house, in lock-step with John Hart, devoted fifty-seven of the seventy-four lines of their response to the Catholics. That is 77.03%, compared to Hart’s 75.83%. See Note 20 above.

<sup>31</sup> *Md. Arch.*, XXXIII, 497-499.

<sup>32</sup> *Ibid.*, XXV, 356.

<sup>33</sup> *Ibid.*, XXXIII, 500.

<sup>34</sup> *Ibid.*, XXXIII, 515-516, 520, 526, 530-531, 538-539, 539-540, 541, 542, 550, 550-551, 553-554, 554, 604, 606, 607, 608, 612-613, 616, 625, 626, 627-628, 631-632, 635, 637, 638.

<sup>35</sup> Owings, *His Lordship’s Patronage*, p. 124.

<sup>36</sup> *Md. Arch.*, XXXIV, 4, 62-63.

<sup>37</sup> Charles Calvert, fifth Baron Baltimore, was born on 29 September 1699. Owings, *His Lordship’s Patronage*, p. 114.



<sup>38</sup> *Md. Arch.*, XXXIV, 107.

<sup>39</sup> Many of the delegates in October of 1720 had also sat in the lower house in April and May of 1718 and May and June of 1719, when the assembly passed the two acts disbaring Macnemara. Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789* (2 vols.: Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 42, 43.

Just how many delegates voted to disbar Macnemara is beyond knowing. The vote to bring in the first bill against him was unanimous (*Md. Arch.*, XXXIII, 260), but the votes on its passage on its first and second readings, its passage for engrossing, and the passage of the engrossed bill are not included in the record. *Ibid.*, pp. 270, 272, 273. The vote on the first reading of the second bill against him is not included in the record; on its second reading the bill passed by only a majority; and the vote on the engrossed bill is not included. *Ibid.*, pp. 402, 423.

<sup>40</sup> *Md. Arch.*, XXXIV, pp. 107-108.

<sup>41</sup> Charles Carroll died on 20 July 1720. Owings, *His Lordship's Patronage*, p. 167.

<sup>42</sup> *Md. Arch.*, XXXIV, 124, 203.

## *Chapter 15*

### *Recapitulation*

Thomas Macnemara's sixteen-and-a-half-year career in Maryland was nothing if not eventful. Arriving Maryland apparently in the spring of 1703 as a redemptioner, he bound himself to the service of Charles Carroll the Settler,<sup>1</sup> the most prominent Catholic in the province.<sup>2</sup> About a year later he married Carroll's niece Margaret, allegedly only after seducing her.<sup>3</sup> Released from Carroll's service, at about that same time — in March of 1703/4 — he was admitted as an attorney in the Anne Arundel County court after he informed the justices that he had been “bred with an able Atty in the Kingdom of Ireland,”<sup>4</sup> though in their derisive and unprincipled letter about Macnemara to the Board of Trade on 18 July 1712 the members of the council would disparagingly concede only that he had “gaind some Tollerable Shoole [*sic*] learning from the Charity of a Popish Priest his Unckle.”<sup>5</sup> During that same month he was admitted to practice in the Prince George's County court and probably in the Calvert County court.<sup>6</sup> At the provincial court for May of 1704 he was admitted as an attorney there,<sup>7</sup> and later he also practiced in the Baltimore County court,<sup>8</sup> the chancery court,<sup>9</sup> and the high court of appeals.<sup>10</sup>

Macnemara was soon in trouble. At the provincial court for May of 1704, the same session at which he was admitted as an attorney there, a petit jury acquitted him of assaulting Matthew Beard and biting off his right ear, apparently because the jury

accepted the claim of William Bladen, who in this case was Macnemara's attorney but who later would become his aggressive enemy, that Beard had assaulted Macnemara first.<sup>11</sup> Whether Macnemara had actually bitten off Beard's ear does not appear, but in this violent age brawlers used what weapons they had. Two months later, at the Anne Arundel County court for August of 1704, Macnemara had to give security of ten pounds sterling after he submitted to the judgment of the court on an unexplained breach of the peace, but in November the justices discharged the bond without prosecution.<sup>12</sup>

It did not take Macnemara long to prove his ability as an attorney. At the Prince George's County court for March of 1705, a year after he was admitted to practice there, he got James Key off without any punishment even though Key had pleaded guilty to entering John Bennett's dwelling house with Thomas Keysey and Morgan Collins with swords, guns, and staves and putting him in bodily fear. In spite of that guilty plea, Macnemara argued that Key "had not in any manner broaken" the queen's peace and that therefore Key could neither be fined nor punished with corporal punishment. The justices agreed.<sup>13</sup> How Macnemara justified his argument does not appear. Joshua Cecil made the same argument for Keysey, who had also pleaded guilty, and in June Collins made it for himself after he too pleaded guilty. Like James Key, both of them escaped without punishment.<sup>14</sup> Surely an attorney who could teach defendants and other lawyers such nifty legal arguments was dangerous.

Before Morgan Collins' case was settled Macnemara was in another fight. At the provincial court for April of 1705 Thomas Roper pleaded guilty to assaulting him, paid a fine of one hundred pounds of tobacco, and had to give security of twenty pounds sterling to guarantee his appearance at the next provincial court and his good

behavior in the meantime. When Roper appeared in September the justices discharged him.<sup>15</sup>

Four months later Macnemara again exhibited his talents as an attorney, this time not as Joshua Cecil's teacher but rather as his adversary. At the Prince George's County court for August of 1705 he was Richard Jones' attorney when a petit jury acquitted Jones of assaulting Cecil but convicted Cecil, who appeared for himself, of assaulting Jones after the grand jury at the Prince George's County court for March of 1705 charged that Cecil had struck Jones and that Jones had thrown Cecil "into the ffyer."<sup>16</sup>

Along with successes came further troubles. At the Anne Arundel County court for January of 1705/6 the justices admonished Macnemara for abusing one of his servants, Margaret Deale,<sup>17</sup> and ordered the freedom of Manus Knark, whom Macnemara claimed as a servant.<sup>18</sup> And at the Prince George's County court for March of 1706 the justices fined him and William Stone one hundred pounds of tobacco each "for giving one another Abusive Languidg before y<sup>e</sup> Court."<sup>19</sup>

Set-backs aside, Macnemara continued to demonstrate his ability as an attorney. At the provincial court for May of 1706 he would have taught William Bladen, now the attorney general, something about accuracy in drawing up indictments if Bladen had not been such a slow learner. After hearing Macnemara's arguments the justices agreed that the indictment against Thomas Whichaley for perjury was insufficient and dismissed Whichaley "of the Premises" because in the indictment Bladen incorrectly identified the justices before whom Whichaley had taken one of his allegedly false oaths and had the wrong justice presiding at the provincial court when he took the other one.<sup>20</sup> In June Macnemara continued Bladen's education when at the Anne Arundel County court he convinced the justices to quash the presentment against

Christopher Vernon for allegedly killing a hog belonging to John Noades,<sup>21</sup> apparently because a prosecution for hog-theft required an indictment rather than only a presentment.<sup>22</sup> At the same court the justices after hearing Macnemara's arguments quashed a bill of indictment against Vernon for allegedly slandering Jonathan Jones,<sup>23</sup> this time apparently because in the common law there was no criminal procedure for prosecuting a person for slandering a private individual. A person could be prosecuted for slandering a peer or an official, but the ordinary private individual had to resort to a civil suit for slander to get justice.<sup>24</sup>

In May of 1707 Macnemara appeared at the provincial court under a recognizance of an unrecorded amount, but again the justices discharged him without prosecution.<sup>25</sup> Possibly this recognizance resulted from a run-in that Macnemara had had with James Carroll, who at this same court had to give security of twenty pounds sterling after Macnemara complained that Carroll had assaulted him.<sup>26</sup>

At this court Macnemara had some significant successes, the least of which probably was his defense of Richard Harrison Jr. against the charge of cutting a mark in the ear of John Mortemore's black mare. A petit jury found Harrison not guilty.<sup>27</sup>

In his second and third successes at this court — getting the justices to overturn two convictions of Edward Hammond for cohabiting with Enoch Griffen's wife Joan — Macnemara taught Bladen and Samuel Worthington, the clerk of indictments of Somerset County, something about accuracy in drawing up indictments and the justices of Somerset County about proper procedures in criminal cases. After a jury at the Somerset County court for March of 1705/6 found Hammond guilty, on a writ of error at the provincial court for September of 1706 Macnemara argued that Worthington had made four errors in drawing up the indictment against Hammond and that the justices had made three additional errors in the proceedings in the case. After

considering Macnemara's arguments, the provincial justices in May of 1707 reversed Hammond's conviction.<sup>28</sup>

Bladen immediately got a new indictment against Hammond, and again the petit jury found Hammond guilty. This time, however, the justices quashed the indictment and discharged Hammond "without Day"<sup>29</sup> after Macnemara argued that they should not proceed to judgment because in the indictment Bladen had failed to identify the parish in which Hammond lived and had failed to state that Joan Griffen was "a Lewd woman." If she was not a lewd woman, Macnemara argued, "Twas noe Crime" for Hammond "to Cohabit with her."<sup>30</sup>

No doubt Macnemara's most important success at this court was his defense of Joseph Hill, a delegate from Anne Arundel County, against the charge of misprision of treason as an alleged accomplice of Richard Clarke, who would be hanged on a bill of attainder on 9 April 1708 for what the assembly in the bill of attainder against him calls "his most Execrable and Trayterous Designes" and his "Illegal Wicked and Trayterous Actions," including allegedly counterfeiting foreign money.<sup>31</sup> The justices nullified the jury's acquittal of Hill and ordered a new trial for him because the jurors had been allowed to "go at large" after they were sworn but before they returned their verdict. Hill was never tried again, however, since the witnesses for the prosecution forfeited their bonds and did not appear, and finally at their court for July of 1708 the provincial justices discharged him.<sup>32</sup> He returned to the lower house, where he continued to represent Anne Arundel County for another fifteen years.<sup>33</sup>

Hill's acquittal did nothing to ingratiate Macnemara with authority. In a power-grab on 30 September 1707 Governor John Seymour disbarred all attorneys, but he and his council quickly readmitted all except Macnemara to their practices.<sup>34</sup> His

excluding the troublesome Macnemara probably resulted as much, or more, from his recent successes as an attorney, especially in his defense of Joseph Hill, than from any *illegal* misbehavior, even though Seymour and his council referred to his “many misdemeanours,” his disdain for and affronting of the justices, his abuse of his clients, and his refusal to reform.<sup>35</sup> In any future trial Macnemara would not be able to serve as Hill’s attorney, and it was at the provincial court that began on 30 September 1707,<sup>36</sup> the very day on which Seymour disbarred Macnemara, that Hill’s second trial was supposed to occur.

When in November of 1707 the grand jury at the Anne Arundel County court indicted William FitzRedmond for allegedly libeling Macnemara on 20 August 1707 by posting on the state-house door a notice that Macnemara was “Known to be a foresworne false and Notorious Villain,”<sup>37</sup> Macnemara’s troubles with his wife Margaret had already begun. He might have spent some time in jail<sup>38</sup> when he could not provide the bond of eight hundred pounds sterling to guarantee his good behavior toward Margaret Macnemara for one year from the date of the bond that Samuel Young, one of the justices of the provincial court, required of him after her complaint against him on 19 August 1707 or possibly earlier. On that date he again appeared before Young, and when he requested to be bailed Young cut his bond in half. This time he was able to find four sureties.<sup>39</sup>

At the provincial court for September of 1707, which opened on the day that Seymour disbarred Macnemara, he appeared under the recognizance of four hundred pounds sterling to guarantee his appearance at that court and his good behavior in the meantime toward Margaret Macnemara and all of the queen’s other subjects. The justices discharged that recognizance because they still considered it excessive and required him to enter a new one of one hundred pounds sterling.<sup>40</sup>

On 13 October Margaret Macnemara petitioned the chancery court, with Seymour and John Hammond sitting as justices, for separate maintenance because of what she alleged were Macnemara's "Continued Intollerable Rigours, severitys and Unchristian Dealings," including scurrilous language, beatings, and even threats to her life, but Macnemara refused to respond to the petition. Seymour three times ordered his arrest, but twice Thomas Smithson, the chief justice of the provincial court, released him on writs of *habeas corpus*.<sup>41</sup>

Before that issue was settled Macnemara spent some time in the stocks. On 17 February 1707/8, Peter Perry, a pauper, complained to Seymour and his council that Macnemara had illegally demanded a fee from him and refused to return it. When Josiah Wilson, the sheriff of Anne Arundel County,<sup>42</sup> asked Macnemara whether he had taken any such fee Macnemara responded that "he reserved the Answer untill he knew whether it was a Crime" and that "what he had gott none should take it from him." For that "Sawcy Answer and other Audatious behaviour" Seymour ordered Wilson to put Macnemara "in the Stocks one full hour bare Breeched." A "great Gust arrising," however, Seymour remitted half an hour of the sentence.<sup>43</sup>

This punishment was for Macnemara's "Sawcy Answer and other Audatious behaviour," not for allegedly taking an illegal fee. On that allegation he was never prosecuted: the incident might never have occurred, or the circumstances might have been quite different from what Perry alleged.

This might have been the only time that anyone in colonial Maryland was set in the stocks bare-breeched. It might have had some effect, since when two days later — on 19 February 1707/8 — Josiah Wilson brought Macnemara into the chancery court he finally agreed to provide the separate maintenance for his wife.<sup>44</sup> A month later, on 24 March 1707/8, Seymour and his council decided to remove Smithson



from the provincial court for bailing Macnemara.<sup>45</sup>

Whether or not sitting bare-breeched in the stocks was what caused Macnemara to reconsider his refusal to respond to his wife's petition, it did not end his troubles. At the Anne Arundel County court for March of 1707/8 the justices fined him one hundred pounds of tobacco for unexplained misbehavior in court,<sup>46</sup> which he apparently was attending even though he was still disbarred. At the provincial court for April of 1708 the justices discharged the recognizance that James Carroll had had to enter after Macnemara accused him of assaulting him,<sup>47</sup> but they showed Macnemara no such favor. They continued the bond of one hundred pounds sterling that he had given in connection with his wife's complaint even though he had agreed to provide her with separate maintenance.<sup>48</sup> At that court also Bladen sued Macnemara on behalf of the queen for four hundred pounds sterling on the earlier recognizance that he had given in connection with the petition, even though the provincial justices had already discharged that recognizance, but in July the justices quashed Bladen's suit after Macnemara's attorney, Robert Goldesborough, argued that Bladen should have summoned Macnemara through a *scire facias* rather than through a *capias ad respondendum*.<sup>49</sup> Another lesson for Bladen, this time from Robert Goldesborough.

At the provincial court for July of 1708 the justices also finally discharged Macnemara's remaining recognizance — the one of one hundred pounds sterling — relating to Margaret Macnemara's complaint.<sup>50</sup> At that court also the justices quashed William FitzRedmond's indictment for allegedly libeling Macnemara.<sup>51</sup> In October of 1708 Macnemara probably did himself no good with Seymour when he led the residents of Annapolis in pressuring the governor into granting a new charter for the city that included a wider franchise than Seymour's earlier charter provided,<sup>52</sup> and in December of 1708 the assembly, as part of a compromise by which Seymour

agreed that the justices of each court rather than the governor and his council could admit and suspend attorneys, wrote Macnemara's disbarment into law.<sup>53</sup>

Macnemara went to Pennsylvania, where by June of 1709 he had managed to get himself disbarred also. Allegedly at the mayor's court for Philadelphia in April, already under one recognizance to keep the peace and two recognizances for his good behavior, he appeared in court wearing a sword and refused to lay it aside when the court required him to, then "obstinately" departed the court "in a contemptuous manner." The grand jurors there asked Governor Charles Gookin to disbar him from practicing law anyplace in Pennsylvania because of what they considered his "Insolent Behaviour & Contempt." In June the court of common pleas for Philadelphia prohibited Macnemara from practicing in that court in the future because by his "Insolent Carriage and Behaviour" he had "Rendered himself . . . obnoxious to the Country in Generall."<sup>54</sup>

By July Macnemara was in trouble again in Maryland. Cornelius White as his attorney sued out a *certiorari* to remove to the provincial court for July of 1709 all indictments and other proceedings against Macnemara at the assizes for Anne Arundel County, but no further information on the *certiorari* has appeared.<sup>55</sup>

After July of 1709 Macnemara's fortunes improved for a few months. On 30 July Seymour died in office;<sup>56</sup> in October Macnemara took advantage of the death of his antagonist and applied to the upper house to be restored to his practice;<sup>57</sup> during that session the assembly repealed Macnemara's disbarment by law;<sup>58</sup> and he was admitted to his practice again.<sup>59</sup> And at the Anne Arundel County court for March of 1709/10 he won a sort of victory when the justices fined Edward Carroll ten shillings after Carroll confessed to assaulting him on a date that the record does not specify.<sup>60</sup>

It was too good to last. The queen disallowed the law repealing Macnemara's disbarment, along with all of the others that the assembly passed at the session of October and November of 1709, because of their improper form,<sup>61</sup> but by the time the assembly in October of 1711 found out about the disallowance<sup>62</sup> Macnemara had been disbarred again for killing Thomas Graham.

On 8 May 1710 Macnemara allegedly assaulted and shot Graham, while John Mitchell stood by abetting, comforting, procuring, assisting, and maintaining him, and wounded him so badly that he died sixteen days later. Both men were jailed in chains,<sup>63</sup> and at the provincial court for July of 1710 the grand jury indicted them for murder. After the petit jurors refused to find them guilty of anything more serious than chance-medley, even though the justices sent the jurors out twice to reconsider their verdict, Mitchell received a pardon, just as a person was supposed to for chance-medley,<sup>64</sup> but at their court for October of 1710 the provincial justices, pretending that they had a precedent in the case of John Vane Salisbury in 1553,<sup>65</sup> illegally raised Macnemara's crime to manslaughter<sup>66</sup> and ordered him branded on the hand after he pleaded benefit of clergy.<sup>67</sup>

Apparently desperate for a precedent, the provincial justices had got the case of John Vane Salisbury wrong. In that case the justices did not raise Salisbury's crime from manslaughter to murder but rather sentenced him to hang after the jury found him guilty of manslaughter to begin with.<sup>68</sup> Thus by misrepresenting an English report the provincial justices guaranteed that if they could not hang Macnemara he would at least suffer the pain of the branding and would never be able to plead benefit of clergy on any future conviction of a capital crime.<sup>69</sup> Maybe they would be able to hang him then.

Life got no easier for the obstreperous attorney. After his conviction of chance-

medley the council, in spite of the compromise of 1708 by which justices were supposed to admit and suspend attorneys in their own courts, disbarred him again.<sup>70</sup> On 30 October 1710 he petitioned the lower house, apparently about his disbarment, but the delegates rejected his petition.<sup>71</sup> By that time he had stirred up the indignation of the delegates by having Thomas Edmondson, a servant of the delegates from Talbot County, arrested in an action in the Anne Arundel County court. The delegates ordered Edmondson released.<sup>72</sup> At the Anne Arundel County court for November of 1710 Macnemara had to give bond of twenty pounds sterling to guarantee his good behavior, possibly after he allegedly threatened John Dodd and his wife and allegedly abused the sheriff, John Gresham Jr., “in the face of the County Court.” After he forfeited that bond, possibly for allegedly assaulting Richard Rolke and, according to his enemies on the council, “beating him very much” without any provocation and “almost scooping out his Eyes,” the justices required him to enter a new bond of one hundred pounds sterling to guarantee his good behavior.<sup>73</sup> Macnemara was never prosecuted for any of these alleged offenses, and the only evidence that they might have occurred comes from the letter of 18 July 1712 from the council to the Board of Trade. But he did have to give bond for *something*, and he did forfeit the one bond.

One allegation followed another. At the provincial court for April of 1711 the grand jury indicted Macnemara for allegedly assaulting and attempting to bugger William Taylard’s fifteen-year-old servant Benjamin Allen on 22 December 1710.<sup>74</sup> Macnemara, however, had already left for England,<sup>75</sup> where he got Queen Anne’s order that he be readmitted to his practice in Maryland and that Edward Lloyd, the president of the council and therefore chancellor of the province in the absence of a governor,<sup>76</sup> grant him a writ of error on the proceedings on the death of Thomas

Graham because the provincial justices should not have raised the petit jury's verdict of chance-medley to their own claim of manslaughter.<sup>77</sup> One of the first things he did in England was to register in Gray's Inn,<sup>78</sup> or, as the members of the council disparagingly put it, he "found means to gett him self Entred . . . [into] Grays inn & calld to the Barr."<sup>79</sup>

On 3 June 1712 Lloyd did readmit Macnemara to his practice but immediately disbarred him again because of the indictment for the alleged assault on and attempted buggery of Benjamin Allen.<sup>80</sup> Apparently there had not been time for him to be readmitted in any of the other courts.

On 18 July 1712 the three provincial justices who had raised Macnemara's crime from chance-medley to manslaughter wrote to the Board of Trade to try to vindicate themselves, and in a long letter to the Board of Trade on that same day the members of the council tried to justify the unrelenting harassment of Macnemara by demonizing him.

Macnemara, the provincial justices alleged, was a "person of an Evil Notorious Life and Conversation" whom the queen had restored to his practice in Maryland only because she had no "true Representation of his Character." The plain evidence of the great malice aforethought, inhumanity, and barbarity of Macnemara's attack on Graham made it clear that his crime was murder rather than only chance-medley, but his evil and sinister friends and relations had tampered with the jury so that it persisted in its verdict of chance-medley even though the justices sent them out a second and then a third time. Therefore, relying for a precedent on the case of John Vane Salisbury, the justices themselves had raised Macnemara's crime from chance-medley to manslaughter.<sup>81</sup>

In their own long letter to the Board of Trade the members of the council in

their effort to discredit Macnemara exhibit a cavalier contempt for the truth. Without giving any date, they say that because of Macnemara's "ill Behaviour" a grand jury of the province presented him as a common barrator and disturber of the peace, but there is no other evidence of such an indictment or presentment.<sup>82</sup> They say that he bit off a boy's ear, but they must have known not only that a petit jury had acquitted him of the alleged assault on Matthew Beard but also that Beard was not a boy but a grown man who apparently had attacked Macnemara first.<sup>83</sup> They say that he took "Twenty shillings and a Considerable Quantity of Bacon" from a pauper for representing him in the chancery court and then "utterly refus'd and neglected to Do anything" in his case, but they do not point out either that Macnemara was never prosecuted on that allegation or that, while Macnemara was wrong if he illegally took the money and the bacon from Peter Perry, the reason that he was not able to do anything for Perry is that he had been disbarred.<sup>84</sup>

Still without giving any dates, the members of the council say that in spite of the violent suspicion against Macnemara he "had Escaped two Coroners Inquests" into the deaths of two of his servants, one of whom, a woman, had made several complaints against him for his inhumane and barbarous treatment, as though he was guilty of the two deaths even though the inquests had cleared him. They say that he "actually [*sic*] forced" a woman at the Calvert County courthouse and was "attempting the like" with an eleven-year-old girl in Prince George's County but was stopped only because somebody broke down the door during the assault, but as in the case of the alleged presentment for barratry there is no further evidence of either of these alleged crimes. If he had been convicted of rape he would have been dead, since the punishment for rape was death.<sup>85</sup> They say that he barbarously murdered Thomas Graham, though they do explain that the petit jury refused to find him and John

Mitchell guilty of anything more serious than chance-medley even though the provincial justices sent the jurors out two additional times to find a harsher verdict and that, failing in that, the justices raised Macnemara's crime to manslaughter.<sup>86</sup>

The members of the council might be more accurate when they say that Macnemara threatened John Dodd and his wife, abused the sheriff of Anne Arundel County "in the face of the County Court," and without any provocation assaulted Richard Rolke, "beating him very much [and] allmost scooping out his Eyes," since at the Anne Arundel County court for November of 1710 Macnemara did have to give bond of twenty pounds sterling to guarantee his good behavior, did forfeit that bond, and did have to enter a new bond, this one for one hundred pounds sterling, for his good behavior.<sup>87</sup> Whether this forfeiture resulted from the alleged assault on Richard Rolke, however, is not clear. Macnemara was never prosecuted for any of these alleged offenses, and except for the letter of the council there is no evidence either that the alleged assault on Richard Rolke occurred or, if it did occur, that it was as serious as the members of the council make it appear.

Completing their misrepresentations, the members of the council say that Macnemara "bugger'd or violently [att]empted to bugger" William Taylard's servant Benjamin Allen, "a Boy about fourteen years" old, once hauling Allen back into bed "by his privitys" while Richard Lock, another of Taylard's servants who was in bed with Allen, was "constrayn'd to lye quiet" because of Macnemara's "many bloody & [te]rrible Threats."<sup>88</sup> Macnemara, however, had already been indicted only for assault and *attempted* buggery, a reality that William Holland, one of the ten members of the council who signed the letter, must have known, since he sat as chief justice at the provincial court for April of 1711,<sup>89</sup> when the grand jury returned that indictment.<sup>90</sup>

Not quite three months after the members of the council wrote their misleading letter — at the provincial court for October of 1712 — the grand jury indicted Macnemara again for the alleged attempted buggery of Benjamin Allen because William Bladen, who apparently had not learned as much as he should have from Macnemara and Robert Goldesborough, had made two serious errors in the first indictment. He had made attempted buggery a felony, while actually it was only a misdemeanor,<sup>91</sup> and he had alleged that Macnemara had acted against “the Statute in that Case provided & published” even though there was no written law against attempted buggery. Attempted buggery was punished under the common law.<sup>92</sup> After Macnemara pleaded not guilty of the attempted buggery but guilty of the assault the justices fined him fifteen hundred pounds of tobacco for the assault and dismissed the charge of attempted buggery.<sup>93</sup> With that case settled, Macnemara was readmitted to his practice of law.<sup>94</sup>

Also at the provincial court for October of 1712 the grand jury returned *ignoramus* a bill of indictment in which Bladen charged that Macnemara had taken excessive fees from John Brannock.<sup>95</sup> At the provincial court for July of 1713 Macnemara sued Brannock for false accusation, and in April of 1714 a petit jury in a special verdict found that Brannock had accused Macnemara “falsely and Injuriously & of his Malice forethought” but did not establish Macnemara’s damages. After the provincial justices allowed Brannock to drag the case on for more than four more years, at the provincial court for September of 1718 Macnemara finally defaulted and had to pay Brannock’s fees.<sup>96</sup> He had gone again to England, this time to protest the assembly’s disbaring him from the practice of law in the province,<sup>97</sup> to see John Robinson, the Bishop of London, on behalf of Jacob Henderson, the ecclesiastical commissary of the Western Shore, in his battle with Governor John Hart,<sup>98</sup> and possibly to see the



Spanish ambassador about getting a tract of land in the Spanish West Indies for the possible settlement of Catholics from Maryland if Hart remained governor,<sup>99</sup> and apparently he had failed to hire another attorney to protect his interests in Maryland in his absence.

In 1713 Macnemara's career took a brighter turn. At the provincial court for April of 1713 he added John Kirke, the clerk of indictments of Dorchester County, to his growing roster of students when he got Mary Lyon's conviction at that court for bastardy overturned because the bill of indictment, which Kirke had sent before the grand jury at the Dorchester County court for March of 1710/11, was not properly endorsed *billa vera* or "true bill," and got a second bill of indictment against her for bastardy quashed for the same reason. Here Macnemara also had another lesson for William Bladen, who prosecuted the first case in the provincial court, to which the cases had been sent on a writ of *certiorari*.<sup>100</sup>

On 12 May 1713 the court of appeals finally "reverst Annulled and altogether held for naught" the judgment against Macnemara in the death of Thomas Graham because, as the Committee for Hearing Appeals from the Plantations had pointed out,<sup>101</sup> the provincial justices should have discharged him for the chance-medley rather than raise the crime to manslaughter and order him branded after he pleaded benefit of clergy.<sup>102</sup> At the Baltimore County court for August of 1713 he won an acquittal for Anthony Drew on the charge of perjury,<sup>103</sup> and at the provincial court for October of 1713 he added Daniel Dulany to his catalogue of students when the justices overturned John Blee's conviction at the Charles County court for March of 1710/11 for horse-theft because Dulany as the clerk of indictments had not bothered to send the bill of indictment against Blee before any grand jury.<sup>104</sup> It was possibly about this time also, if not earlier, that the "free Voters" of Annapolis elected Macne-

mara to the common council of the city.<sup>105</sup>

The good fortune was not unadulterated. At the provincial court for April of 1714 the justices required Macnemara to give bond of twenty pounds sterling after Anthony Ivy swore that he was afraid that Macnemara would do him bodily harm.<sup>106</sup> By that time Macnemara had improved his status in the province, no doubt much to the chagrin of local authority, by becoming attorney for Maurice Birchfield, the surveyor general of customs,<sup>107</sup> who was trying to collect debts that he claimed Marylanders owed to the Crown. Probably it is no accident that Birchfield chose Macnemara, who had already exhibited not only his ability as an attorney but also his willingness to challenge the powerful. In May of 1714 he brought 113 cases before the chancery court,<sup>108</sup> in some of which he sued very prominent people<sup>109</sup> and some of which dragged on until July of 1720,<sup>110</sup> almost a year after Macnemara's death.<sup>111</sup>

Suing all of those people apparently did nothing to diminish Macnemara's increasing prestige among a fair section of the population. A month after he brought the suits — on 22 June 1714 — the delegates made him clerk of the lower house,<sup>112</sup> and sometime within a few months or weeks before or after 29 September 1714 the mayor and aldermen of Annapolis must have elected him an alderman.<sup>113</sup>

In spite of these votes of confidence, Macnemara's problems continued. At the provincial court in July of 1714 — after Macnemara became clerk of the lower house but apparently before he became an alderman of Annapolis — William Dobson swore that a few days earlier Macnemara had assaulted him.<sup>114</sup> The response of the justices is unclear, but the issue would not be resolved for almost two years.<sup>115</sup> At the Baltimore County court for March of 1714/15 the justices fined Macnemara, apparently twenty-five shillings, after the Reverend Thomas Bayley swore that he had heard him profanely swear five oaths,<sup>116</sup> and one week later the justices of Anne

Arundel County fined him one hundred pounds of tobacco for not attending court as an attorney.<sup>117</sup>

There were also more serious annoyances for the alderman. At the provincial court for April of 1715 the grand jury returned an indictment against him for allegedly assaulting John Navarre on a date that the record does not include and separate indictments against him and his servant James Horsley for allegedly assaulting Navarre's wife Mary on 28 October 1714.<sup>118</sup>

While these indictments were outstanding, however, Macnemara had some more successes. On 29 September 1715 the mayor, recorder, aldermen, and common-councilmen of Annapolis elected him mayor.<sup>119</sup> At the Prince George's County court for March of 1716 he successfully defended John Quinn on a charge of hog-theft in a case in which James Haddock, the clerk of indictments, had not sent the bill of indictment before any grand jury,<sup>120</sup> and thus Haddock was added to Macnemara's expanding list of alumni. At that same court he represented John Hart in an action of trespass on the case in which Hart recovered 6,300 pounds of tobacco damages and 364 pounds of tobacco costs from Christopher Barnes.<sup>121</sup> At this point, therefore, Macnemara and Hart must have been getting along well enough,<sup>122</sup> but that was about to change.

At the provincial court one month later — May of 1716<sup>123</sup> — Macnemara's good fortune continued. Two separate juries acquitted him and James Horsley of assaulting Mary Navarre,<sup>124</sup> and the justices struck off the indictment against Macnemara for allegedly assaulting John Navarre after Navarre told the court that he could not maintain it.<sup>125</sup> That might have been part of a deal by which Macnemara, Horsley, and Richard Rotherfoot agreed not to prosecute John and Mary Navarre for their alleged assaults on Horsley and Rotherfoot on 22 October 1714, six days before

Macnemara's and Horsley's alleged assaults on Mary Navarre.<sup>126</sup> At that same court another jury acquitted Macnemara in an action on a *scire facias* by which Bladen tried to recover Macnemara's bond of twenty pounds sterling for his good behavior after Bladen charged that while under that bond Macnemara assaulted William Dobson on the eighth Monday after Easter of 1714. Apparently the jury accepted Macnemara's argument that he had only responded to Dobson's assault on James Horsley.<sup>127</sup>

The year was a busy one for Macnemara. At the provincial court for July of 1716 the justices fined him two hundred pounds of tobacco for not attending court as an attorney,<sup>128</sup> and at a special court of oyer and terminer in Annapolis on 10 July, the day after the session of the provincial court ended,<sup>129</sup> he churned up John Hart's wrath when he defended the Catholics who fired the guns of Annapolis on 10 June 1716, the birth-night of the Catholic Pretender, James Edward, the son of James II,<sup>130</sup> as well as those who allegedly drank James Edward's health and spoke contemptibly of and "audaciously Curs[ed]" King George. Here Macnemara was less than successful, since Edward Coyle and William FitzRedmond paid heavy fines for drinking the Pretender's health and speaking contemptibly of the king, while the servant who fired one of the guns was whipped and pilloried after the servant who fired the other gun turned evidence in return for a pardon and the reward of twenty pounds sterling.<sup>131</sup>

At the provincial court for September of 1716 Bladen brought another prosecution against Macnemara on a *scire facias*, an action that the justices would later strike off.<sup>132</sup> At that same court Macnemara had another lesson for John Kirke when he got Bladen to enter a *non pros* against Michael Fletcher on an indictment from the Dorchester County court for June of 1716 for stealing six hogs worth four hundred pounds of tobacco from Lawrence Haukit or Hankit and cutting new marks in their

ears sometime in January of 1715/16.<sup>133</sup> Why Bladen was willing to enter the *non pros* does not appear.

On 4 October Hart, outraged at Macnemara's defense of the Catholics at the special court in Annapolis in July, started the fight that would continue for the rest of Macnemara's life when he called the talented attorney before the council to inquire into his "Character Principles in Religion [and] Loyalty & Affection" to King George and "his most August Family." A week later Macnemara allegedly announced in that on that occasion Hart and his council had acted like the Spanish Inquisition, an observation for which he would be indicted eighteen months later.<sup>134</sup>

Sometime after this harsh analysis of Hart and his council on 11 October 1716 Macnemara, now an alderman again, went to England,<sup>135</sup> where he tried to get Hart fired for allegedly importing goods without paying the duty on them<sup>136</sup> and, according to Hart, also lobbied for the collectorship of Patuxent.<sup>137</sup> Possibly he was also one of the emissaries from the Catholics to complain about Hart's treatment of them in Maryland.<sup>138</sup>

By the time the provincial court met on 9 April 1717<sup>139</sup> Macnemara was back in the province,<sup>140</sup> where in spite of some successes his troubles intensified. At that court the justices, with Macnemara appearing for himself, struck off the action on the *scire facias* that Bladen had brought against him at the provincial court for September of 1716, but no details of that prosecution remain.<sup>141</sup> At that court also, after Macnemara argued that the indictment against Dominick Kenslagh from the Kent County court for March of 1713/14 for assaulting James Harris, the sheriff of the county, on 7 November 1713 was insufficient, the justices agreed and quashed the indictment.<sup>142</sup> How it was insufficient does not appear.

In the mid-summer of 1717 Macnemara's prestige in the province must have

increased still further when Hart appointed him naval officer of Patuxent,<sup>143</sup> no doubt only because Baltimore and Lord Guilford, Baltimore's guardian,<sup>144</sup> ordered him to.<sup>145</sup> The appointment, as Baltimore and Guilford complained later,<sup>146</sup> did not silence him. On 13 July 1717 he allegedly spoke publicly in a "threatning manner and accent" about Hart for granting a *supersedeas* in the case of Andrew Dalrymple, and on 13 August 1717 he allegedly threatened to have Hart arrested if anybody complained against him.<sup>147</sup> At the Baltimore County court for August of 1717 the grand jury returned a bill of indictment against him *ignoramus*, but since there is no further record of the bill there is no way to know what he was alleged to have done.<sup>148</sup> At the Anne Arundel County court a week later he had to give bond to guarantee his good behavior, especially toward William Bladen, after Bladen complained that Macnemara had called him a "Blockhead booby" and had ". . . [given] him the Lye thrice," but in November the justices discharged the recognizance with no prosecution.<sup>149</sup>

The more popular and successful Macnemara became the more important it became to destroy him. At the provincial court for September of 1717 — within four weeks of Bladen's complaint that Macnemara had called him a blockheaded booby and had given him the lie three times<sup>150</sup> — Bladen got six indictments against him.<sup>151</sup> Macnemara had to give bond of three hundred pounds sterling to guarantee his appearance from day to day to answer the indictments.<sup>152</sup> Four of the indictments the justices disposed of at that court. On two of them — both for allegedly taking excessive fees — two separate petit juries found Macnemara not guilty,<sup>153</sup> and two of them — one for allegedly taking excessive fees and the other for allegedly collecting fees from a man who had never hired him as an attorney — the provincial justices quashed because of their insufficiency.<sup>154</sup> The other two indictments — one for

allegedly taking excessive fees and the other for allegedly speaking publicly in a threatening manner about John Hart and threatening to arrest him — were never tried but, along with two other indictments, were still outstanding when Macnemara died.<sup>155</sup>

Still determined to find an excuse to rid himself and the province of Macnemara, when the chancery court opened on 10 October 1717 Hart immediately tried to pick a fight with him by insisting that he agree that Hart had not called him “a Rogue & a Rascall” in the chancery court, as Macnemara had claimed. When Macnemara, who refused to take the bait by challenging the governor directly but appears rather to have been trying to smooth things over without submitting completely, would concede only that “to the best of his Remembrance” Hart “did Call him a Rogue & a Rascall,” Hart made the most of what little he had got. Constitutionally incapable of compromise, he claimed that Macnemara was calling him a liar, which Macnemara clearly did not do, suspended him from his practice in chancery, and ordered Bladen to prosecute him for his contempt and for “lessening his Lordships Authority and the Grandeur” of the chancery court.<sup>156</sup> Apparently, however, there was no such prosecution.

On 4 December 1717 Macnemara not only became still more dangerous to Hart and his cronies by becoming proctor or procurator of office for Jacob Henderson, the ecclesiastical commissary for the Western Shore,<sup>157</sup> but also immediately forged a further disruption of Hart’s equilibrium by bringing proceedings against Henry Hall, the rector of St. James’ Parish in Anne Arundel County and apparently one of Hart’s great favorites, for allegedly threatening the Bishop of London, for “most audaciously contemning” the bishop’s authority and the exercise of it, and for habitual drunkenness.<sup>158</sup> Hart supported Hall,<sup>159</sup> and Henderson gave up the investigation.<sup>160</sup> Thus all

Macnemara got for trying to clean up the clergy was more trouble for himself.

At the chancery court on 24 February 1717/18 Macnemara, still disbarred from his practice there, had another run-in with Hart. Once again the governor started the battle when he complained that Macnemara “in the face of” the chancery court had indirectly called him a liar by denying that he had begged Hart’s pardon before Maurice Birchfield and William Bladen by saying that he was sorry that he had ever said anything that might offend Hart but that he would not beg the council’s pardon.<sup>161</sup> Obviously somebody either had a bad memory or was lying.

Then Hart objected to Macnemara’s request that a letter of 16 November 1717 from Guilford be entered into the records of the chancery court. Both Macnemara’s desire to have the letter entered and Hart’s objections are understandable, since Macnemara no doubt feared the governor’s vengeance for having tried to get him fired during his trip to England in 1716, and Macnemara might use the letter, in which Guilford assured him that he had told Hart “to order matters so that” Macnemara would “not by any means be Interrupted” in his practice, to argue not only that Hart could not take any action against him in the future but also that Hart should restore him to his practice in chancery. Macnemara insisted, and the letter was entered.<sup>162</sup>

Hart and Bladen were implacable. At the provincial court for April of 1718 Bladen sent three more bills of indictment against Macnemara before the grand jury,<sup>163</sup> but the grand jurors returned two of them — rewrites, with changed dates, of the two indictments that the provincial justices had quashed earlier — *ignoramus*.<sup>164</sup> On the third one — for allegedly comparing John Hart and his council to the Spanish Inquisition back on 11 October 1716 — the grand jury returned a true bill, but at the provincial court for July of 1718 Macnemara got the benefit of the king’s general pardon because he had committed the alleged offense before 1 May 1717, and therefore



he was never tried.<sup>165</sup>

Macnemara had protested the suspension from his practice in the chancery court to Baltimore and Guilford,<sup>166</sup> but in a letter to Hart dated 4 February 1717/18 their Lordships supported the suspension until Macnemara “made his due Submission” to Hart “in such Terms and manner” as Hart with the advice of his council thought proper.<sup>167</sup> In a letter of the same date they told Macnemara the same thing: before he could be restored to his practice in chancery he should “make a due Submission in Court . . . in such Terms and manner” as Hart should prescribe.<sup>168</sup>

If Macnemara submitted as their Lordship’s ordered, Hart would lose everything he had gained by disbaring him in the chancery court. By the time the assembly met on 22 April 1718 he had decided to get rid of his affliction once and for all. That would require not only his ignoring their Lordships’ instructions but also his engaging in what appears clearly to have been a conspiracy with the sympathetic — or possibly sycophantic — members of the upper house.

In his opening speech to the assembly on the twenty-third Hart began the attack on Macnemara when he reminded the two houses that they knew “the man & his Conversation” and that they were not ignorant of the disturbances he had caused the government for almost as long as he had been in the province. Later he would explain his reasons for suspending Macnemara from his practice in the chancery court, and, hinting that he would ask for a law disbaring the attorney, he would ask the assembly to consider whether by the laws of the province such insolence as Macnemara’s was exempt from punishment.<sup>169</sup>

Since in his speech Hart had some harsh words for Macnemara nobody should have been surprised when Macnemara asked for a copy of it. Apparently, however, he did not show the respect for the lower house that the delegates demanded. Instead,

he offended them by allegedly using “Severall Expressions Seemingly to extort” from Michael Jenifer, the clerk of the lower house, a copy of Hart’s speech and also by allegedly expressing some reflections on the lower house. When the delegates called him before them on the twenty-fourth he was courteous enough: he told them that “having been drinking Wine” he could not remember using any such expressions but that if he did he was sorry for it.<sup>170</sup>

The next day — on 25 April — Hart and the members of the upper house started their campaign in earnest when they sent the delegates copies of three outstanding indictments against Macnemara<sup>171</sup> and a copy of Hart’s proceedings against him in the chancery court on 10 October 1717 and 24 February 1717/18.<sup>172</sup> On the twenty-ninth they sent the delegates a copy of Baltimore’s and Guilford’s letter of 4 February 1717/18 in which they expressed their support of Hart’s suspension of Macnemara from his practice in chancery until he “made his due Submission” in a manner that Hart and his council considered appropriate, and, scavenging through the past, included a transcript of Macnemara’s troubles in Pennsylvania way back in 1709.<sup>173</sup>

By 5 May Hart and the members of the upper house had perfected their strategy, and in their proceedings that day they directly ignored Baltimore’s and Guilford’s instructions in two separate ways. First, instead of giving Macnemara a chance to submit in the chancery court, Hart called him before the upper house, where the attendance usually was greater than in the chancery court<sup>174</sup> and where therefore he — Hart — would have more support than he would have had in the court. Second, Hart refused to propose any “Terms and manner” for Macnemara’s submission but instead asked Macnemara whether he had anything to offer him. Thus he was reversing the process, forcing Macnemara to take the initiative, which, as he must have

expected and no doubt hoped, the proud attorney would not do. Macnemara refused to grovel but instead correctly reminded Hart that *he* was supposed “to make Proposals” to *him*. After a couple more exchanges the interview ended,<sup>175</sup> and Hart had the excuse he needed to proceed.

After the reading of Baltimore’s and Guilford’s letters to Hart and to Macnemara, it was the turn of the four of the five provincial justices who were also members of the upper house and who were present to do their part in the travesty.<sup>176</sup> They presented their “humble Representation,” which they obviously had written up before Macnemara’s appearance and which not only would support Hart’s efforts to get the assembly to disbar Macnemara but also, if by chance Macnemara had actually submitted to Hart, would have provided an alternative excuse for demanding such a law. After a strong attack on Macnemara, the provincial justices threatened no longer to serve as justices if he was allowed to continue to practice before that court.<sup>177</sup>

The next morning the delegates got into the act by sending to the upper house the report of their Committee of Aggrievances complaining about Birchfield’s suits against all of those Marylanders and claiming, without mentioning his name, that as Birchfield’s attorney Macnemara was misusing his power.<sup>178</sup> On the seventh the upper house sent the delegates a report of Macnemara’s interview with Hart with a review of some of the allegations against him, along with “severall Papers relating to . . . [the] Affair” — no doubt including the “humble Representation” of the four provincial justices —, hoped that those “severall Papers” would give the delegates full satisfaction on the issue, and asked the delegates to consider whether it might be advisable to disbar Macnemara throughout the province by an act of the assembly “or otherwise” as the delegates might think proper.<sup>179</sup> The delegates immediately agreed to bring in a bill to disbar Macnemara.<sup>180</sup>

The next day a conference committee appointed to draw up a message to Baltimore and Guilford blamed Birchfield's bringing the actions against Marylanders directly on the "Avaritious & Litigious Temper" of Birchfield's attorney — Thomas Macnemara, of course —, who acted only "for the Sake of Increaseing his ffees."<sup>181</sup> On the ninth the Committee of Laws brought in a bill disbaring Macnemara,<sup>182</sup> and, ignoring Macnemara's petition to be heard,<sup>183</sup> this deliberative assembly completed all of the action on the bill, including its final passage, on that same day.<sup>184</sup> The following day, the last day of the session, Hart signed the bill into law<sup>185</sup> and both houses approved of the conference committee's message to Baltimore and Guilford.<sup>186</sup>

Thirteen days after Hart signed the bill against Macnemara, the disbarred attorney met with further cause for concern when on 23 May Abraham Birkhead complained to Hart that on 22 April Macnemara as naval officer of Patuxent forced him to pay him £86.5.0 sterling instead of the £56.10.4 that was the actual amount of the judgment against him in the chancery court in September of 1717. After John Hart, Samuel Young, and Philemon Lloyd sitting in the chancery court on 31 May heard Macnemara's evidence, along with that of Maurice Birchfield, Birkhead's attorney Thomas Bordley, and Macnemara's two clerks, Thomas Rogers and William Cuming, they decided that Macnemara had defrauded Birkhead and had converted to his own use the difference between the £56.10.4 sterling Birkhead owed and the £86.5.0 that Macnemara collected and ordered William Bladen to prosecute him for his deceit.<sup>187</sup>

Still Macnemara's troubles were not finished. At Anne Arundel County court for June of 1718 Bladen got an indictment against him for an alleged assault on Benjamin Freeman, but Macnemara died before he was tried.<sup>188</sup> In a conversation

with Edward Griffith on 22 June 1718, according to Griffith, Macnemara “induced” him to say that John Hart had been “a Rogue from the Beginning,” and in another conversation a week later, again according to Griffith, Macnemara induced him to say that if ever there came a change of government in England Hart would be turned out. At the provincial court for July of 1718, the same court at which Macnemara received the benefit of the king’s pardon on the indictment for allegedly comparing Hart and his council to the Spanish Inquisition, the grand jury indicted the seducible Griffith, but Griffith apologized to Hart, Hart forgave him heartily, and the provincial justices, getting the hint, decided to prosecute him no further.<sup>189</sup> Apparently Macnemara was not punished for his alleged inducement of Griffith.

Also at the provincial court for July of 1718 Bladen got an indictment against Macnemara for recovering more money from Abraham Birkhead than the king had coming and converting the difference to his own use, but this one too was still outstanding when Macnemara died.<sup>190</sup> At the provincial court for September of 1718 Macnemara, who had gone to England, apparently without hiring anyone to protect his interests in Maryland,<sup>191</sup> finally defaulted in his action against John Brannock for false accusation and had to pay Brannock’s costs.<sup>192</sup>

In his opening speech to the assembly on 14 May 1719 Hart informed the two houses that Baltimore and Guilford had disallowed the act against Macnemara because it was an *ex post facto* law, because the assembly had passed it without giving Macnemara a chance to defend himself, and because the disbarment was tacked on to another law.<sup>193</sup> During that same session, however, Hart and the assembly, defying Baltimore’s and Guilford’s instructions to pass no more acts against specific people but to pass only a general act regulating the conduct of attorneys,<sup>194</sup> passed not only a general act<sup>195</sup> but also another act specifically disbarring Macnemara.<sup>196</sup> This

time they attached to the act the complaint of the four provincial justices to the upper house against him in May of 1718 and the four outstanding indictments against him<sup>197</sup> in the apparent hope that those items would help convince Baltimore and Guilford to accept this act even though it is almost identical to the one they had just disallowed and even though Macnemara still had not had a chance to defend himself. Macnemara died before Baltimore and Guilford could respond to this act.<sup>198</sup>

Thus from April of 1715 through July of 1718 William Bladen got ten indictments against Macnemara in the provincial court and one in the Anne Arundel County court, but he successfully prosecuted none of them. On three of them petit juries found Macnemara not guilty; two of them the provincial justices quashed; one the provincial justices struck off because the alleged victim could not maintain it; on one Macnemara received the king's pardon before he was ever tried; and four were never tried but were still outstanding when Macnemara died. Of course Macnemara did leave for England sometime after the middle of July of 1718 and did not get back until sometime before the Anne Arundel County court met in August of 1719,<sup>199</sup> shortly before he died, but he was available in October of 1717 and April of 1718, when the justices continued the two remaining indictments from September of 1717.<sup>200</sup> Since Bladen had had little success prosecuting Macnemara on the other indictments, he and his colleagues in power might have been well enough satisfied to allow the outstanding indictments against him to remain unprosecuted rather than to take a chance on any more acquittals. The outstanding indictments they could use against him;<sup>201</sup> acquittals they could not.

Besides those eleven prosecutions, during these three years and three months grand juries at the provincial court returned two other bills of indictment against

Macnemara *ignoramus*;<sup>202</sup> a grand jury at the Baltimore County court returned a bill of indictment against him endorsed *ignoramus*;<sup>203</sup> and Bladen twice prosecuted him unsuccessfully on writs of *scire facias*.<sup>204</sup>

The failure of authority in 1704 to convict Macnemara on the indictment for allegedly assaulting Matthew Beard and biting off his ear, its failure to convict him on any of the eleven indictments brought against him from April of 1715 on or in the actions on the two writs of *scire facias* that Bladen brought against him, its failure at least three times after that date even to get indictments against him, and its failure to prosecute him for whatever led to several of the recognizances that he had to give for his good behavior during his career in Maryland, make it appear that it should never have brought the prosecutions to begin with and that the recognizances resulted from incidents for which Macnemara was either not at fault or only partially at fault. Apparently the Protestant authority was giving this alleged friend of the Catholics the hardest possible time they could simply because of who he was.

As much energy as Macnemara's enemies in authority spent trying to destroy him, they were able to convict him of only one crime — chance-medley in the death of Thomas Graham in 1710 —, and he pleaded guilty to one more — the assault on Benjamin Allen later in the same year. Even in those cases authority did not succeed completely. In Thomas Graham's death it could get a conviction only of chance-medley rather than of murder or manslaughter, and in the alleged attack on Benjamin Allen the provincial justices dismissed the charge of attempted buggery after Macnemara pleaded guilty only of assault.

In the death of Thomas Graham the provincial justices made Macnemara himself a victim. When they sent the petit jury out twice to reconsider its verdict of chance-medley they must have been trying to railroad him to the gallows, and when

they illegally raised the chance-medley to manslaughter they denied him the pardon that was supposed to be automatic for chance-medley and were able to order him branded after he pleaded benefit of clergy. If they could not hang him they could at least guarantee him the pain of a brand on the hand. Maybe he would commit a capital crime later, and since he would not be able to plead benefit of clergy a second time they could hang him then. They could have ordered him branded for the manslaughter,<sup>205</sup> but then he could have pleaded benefit of clergy in the future.



## *Chapter 15*

### *Recapitulation*

<sup>1</sup> Council of Maryland to Board of Trade, 18 July 1712, The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127 (photocopy in Library of Congress).

<sup>2</sup> Ronald Hoffman, “‘Marylando-Hibernus’: Charles Carroll the Settler, 1660-1720,” *The William and Mary Quarterly*, Third Series, XLV, No. 2 (April 1988), pp. 207-236; Ronald Hoffman, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500-1782* (Chapel Hill: The University of North Carolina Press, 2000), Chapter 2, “Marylando-Hibernus.”

<sup>3</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; Hoffman, *Princes of Ireland, Planters of Maryland*, p. 92, and Appendix 6, Chart B.

<sup>4</sup> Anne Arundel County Court Judgment Record, Liber G, p. 320. Unless noted otherwise, all original records come from the State Archives in Annapolis. I thank Patricia V. Melville, Director of Appraisal and Description (retired), and Dr. R. J. Rockefeller, former Director of Reference Services, for their patience in answering my questions about the records there.

<sup>5</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Vol. 720, pp. 123-127. See also Chapter 6, “Dishonest Enemies, 1712,” at Notes 11-49.

<sup>6</sup> Prince George's County Court Record, Liber B, p. 289; *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXV, 226-227.

<sup>7</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 261, 266.

<sup>8</sup> Baltimore County Court Proceedings, Liber I. S., No. A, p. 93.

<sup>9</sup> Chancery Record 2, p. 677.

<sup>10</sup> Carroll T. Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729* (Washington: The American Historical Association, 1933), p. 108. For Macnemara's practicing in these courts, see also Chapter 2, "Competence," at Notes 6, 8-13, and Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), pp. 513-514.

<sup>11</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 266, 268-270.

<sup>12</sup> Anne Arundel County Court Judgment Record, Liber G, pp. 493, 647.

<sup>13</sup> Prince George's County Court Record, Liber B, pp. 338a, 343-344, 354a-355.

<sup>14</sup> *Ibid.*, pp. 338a, 344, 359-359a, 384-384a.

<sup>15</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 555, 559, 566b; Liber T. B., No. 2, p. 75.

<sup>16</sup> Prince George's County Court Record, Liber B, pp. 360a, 402a-403, 403-403a.

<sup>17</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 150.

<sup>18</sup> *Ibid.*, p. 148.

<sup>19</sup> Prince George's County Court Record, Liber C, p. 57.

<sup>20</sup> Provincial Court Judgment Record, Liber T. B., No. 2, pp. 72, 77, 211-215.

<sup>21</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 170,

304.

<sup>22</sup> 1704, c. 55, *Md. Arch.*, XXVI, 335-336, together with 1704, c. 25, *Md. Arch.*, XXVI, 266-269.

<sup>23</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 170, 304-305.

<sup>24</sup> Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4 vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), III, 123-125; Theodore F. T. Plucknett, *A Concise History of the Common Law* (5th edition; London: Butterworth & Co. (Publishers) Ltd., 1956), pp. 483-502; S. F. C. Milsom, *Historical Foundations of the Common Law* (London: Butterworths, 1969), pp. 332-344; John Wilder May, *The Law of Crimes* (Boston: Little, Brown, and Company, 1881), p. 187.

<sup>25</sup> Provincial Court Judgment Record, Liber P. L., No. 1, p. 213.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, pp. 157-159.

<sup>28</sup> *Ibid.*, pp. 198-206, 224; Somerset County Land Records, Liber A. B., pp. 61, 70-77, 115, 145. For Macnemara's arguments, see Chapter 2, "Competence," at Notes 73-87.

<sup>29</sup> "Without day" means that Hammond would not have to return to court to respond to the charge again. Blackstone, *Commentaries*, III, 399; Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Company, 1990), p. 1603.

<sup>30</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 91, 159-160, 213-214.

<sup>31</sup> For Richard Clarke, see *Md. Arch.*, XXV, 240; 1705, c. 5, *Md. Arch.*, XXVI, 513-514; 1707, c. 1, *Md. Arch.*, XXVII, 139-140; The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), No. 1570; TNA (PRO), Colonial Office 5, Vol. 727, p. 89 (photocopy in Library of Congress).

<sup>32</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 90-91, 219-220, 238; Liber P. L., No. 2, pp. 24, 233-236; *Md. Arch.*, XXVII, 34-37, 111, 114-118.

<sup>33</sup> *Md. Arch.*, XXVII, 200, 267, 410, 517; XXIX, 33, 127, 259, 391, 467; XXX, 95, 360, 477; XXXIII, 53, 201, 365, 565; XXXIV, 61, 199, 401, 656; XXXV, 91; Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 37-44, 441.

<sup>34</sup> *Md. Arch.*, XXV, 223-224, 226, 236, 237. Previously the justices admitted attorneys to practice before them.

<sup>35</sup> *Ibid.*, pp. 226-227.

<sup>36</sup> Provincial Court Judgment Record, Liber P. L., No. 1, p. 233.

<sup>37</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 647, 648, 673, 695-697.

<sup>38</sup> But see Chapter 4, "Not-So-Loving Spouses, 1707-1708," at Notes 6-9.

<sup>39</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 353-354.

<sup>40</sup> *Ibid.*

<sup>41</sup> Chancery Record 2, pp. 579-585. See again Chapter 4, "Not-So-Loving Spouses, 1707-1708," at Notes 26-36.

<sup>42</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 672,

686.

<sup>43</sup> *Md. Arch.*, XXV, 234-235.

<sup>44</sup> Chancery Record 2, pp. 579-585.

<sup>45</sup> *Md. Arch.*, XXV, 228-233, 236-237, 239-240.

<sup>46</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, p. 688.

<sup>47</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 213, 237; Liber P. L., No. 2, p. 24.

<sup>48</sup> *Ibid.*, Liber P. L., No. 1, pp. 353-354; Liber P. L., No. 2, p. 25.

<sup>49</sup> *Ibid.*, Liber P. L., No. 2, p. 169.

<sup>50</sup> *Ibid.*, p. 241.

<sup>51</sup> *Ibid.*, pp. 122, 242-245.

<sup>52</sup> *Md. Arch.*, XXVII, 191, 191-192, 192-193, 200, 209-210, 213, 216, 218, 219-220, 220-221, 221; 1708, c. 7, *Md. Arch.*, XXVII, 358-360; Chancery Record 2, pp. 590-602; Elihu S. Riley, "The Ancient City." *A History of Annapolis, in Maryland, 1649-1887* (Annapolis: Record Printing Office, 1887), pp. 85-91.

<sup>53</sup> 1708, c. 8, *Md. Arch.*, XXVII, 360-362.

<sup>54</sup> *Md. Arch.*, XXXIII, 141-144, 220, 225-226; Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>55</sup> Provincial Court Judgment Record, Liber P. L., No. 2, p. 612. For the assizes, see Chapter 3, "Early Troubles, 1703-1710," Note 37; C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), pp. 73-114.

<sup>56</sup> Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 120.

<sup>57</sup> *Md. Arch.*, XXVII, 381, 414-415, 415.

<sup>58</sup> 1709, c. 14, *Md. Arch.*, XXVII, 485-486.

<sup>59</sup> Provincial Court Judgment Record, Liber P. L., No. 3, p. 104; Anne Arundel County Court Judgment Record, Liber T. B., No. 2, p. 91; Baltimore County Court Proceedings, Liber I. S., No. A, p. 93.

<sup>60</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, pp. 115, 119, 121.

<sup>61</sup> TNA (PRO), Colonial Office 5, Vol. 717, No. 18 (pp. 53-55), (photocopy in Library of Congress); *Md. Arch.*, XXIX, 3-4, 34; XXX, 492.

<sup>62</sup> *Md. Arch.*, XXIX, 3-4, 34.

<sup>63</sup> Unidentified writer in Maryland to unidentified correspondent in England, 13 August 1710, TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(a).

<sup>64</sup> Statutes of Marlborough, 52 Henry III, c. 25 (1267), in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), I, 71; Statutes of Gloucester, 6 Edward I, c. 9 (1278), in *ibid.*, p. 124; Statutes of Northampton, 2 Edward III, c. 2 (1328), in *ibid.*, pp. 421-422; Sir James Astry, *A General Charge to All Grand Juries* (London: Printed for W. Turner, 1703), p. 60; William Hawkins, *A Treatise of the Pleas of the Crown* (2nd edition; 2 vols.; London: E. and R. Nutt and R. Gosling: Assigns of Edward Sayer, 1724-1726; reprinted New York: Arno Press, 1972), II, 380-381; Blackstone, *Commentaries*, IV, 188; Sir William Holdsworth, *A History of English Law* (17 vols.; London: Methuen & Co., 1903-1972), III, 257-258, 265, 295, 300; Sir Frederick Pollock and Frederic W. Maitland, *The History of English Law Before the Time of Edward I* (2nd edition; 2 vols.; Cambridge: Cambridge University Press, 1898; reprinted Cambridge: Cambridge University Press, 1968), II, 479-484; Sir James Fitzjames Stephen, *A History of the*

*Criminal Law of England* (3 vols.; London: Macmillan and Co., 1883; reprinted New York: Burt Franklin; n. d.), III, 76.

<sup>65</sup> Edmund Plowden, *The Commentaries, or Reports of Edmund Plowden, of the Middle-Temple, Esq; An Apprentice of the Common Law, containing, Divers Cases upon Matters of Law, Argued and Adjudged in the Several Reigns of King Edward VI. Queen Mary, King and Queen Philip and Mary, and Queen Elizabeth, Originally Written in French . . .* (Dublin: Printed for H. Watts, 1792), (no page numbers), header Anno 1 Mary I.

<sup>66</sup> While it was legal for the justices to send the petit jury out to reconsider its acquittal if they thought that the verdict was “against manifest Evidence,” the court could not set aside an acquittal. Hawkins, *The Pleas of the Crown*, II, 442.

Of course the petit jury did not acquit Macnemara and Mitchell, but by increasing the seriousness of Macnemara’s crime the justices were setting aside the jury’s verdict and imposing a harsher one of their own.

<sup>67</sup> Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231-234, 243, 257, 258, 398-400; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.I; Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16; Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.I; Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729*, pp. 156-164.

<sup>68</sup> See Chapter 5, “Railroading, 1710-1713,” at Notes 38-39.

<sup>69</sup> A layman could legally plead benefit of clergy only once (Blackstone, *Commentaries*, IV, 367), though in England the courts were inconsistent in applying

that rule. J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986), p. 142; J. S. Cockburn, *A History of English Assizes, 1558-1714* (Cambridge: Cambridge University Press, 1972), pp. 125, 128-129.

<sup>70</sup> Provincial Justices to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.I; Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>71</sup> *Md. Arch.*, XXVII, 532.

<sup>72</sup> *Ibid.*, pp. 532, 535-536.

<sup>73</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, p. 201, 204; Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>74</sup> Provincial Court Judgment Record, Liber T. P., No. 2, pp. 2, 586-587.

<sup>75</sup> Unidentified writer in Maryland to unidentified correspondent in England, 4 April 1711, TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 101.ii(b).

<sup>76</sup> Owings, *His Lordship's Patronage*, pp. 120, 124; Chancery Record 2, pp. 833, 865; Chancery Record 3, pp. 1, 8.

<sup>77</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>78</sup> Macnemara was registered in Gray's Inn on 17 April 1711. Joseph Foster, *The Register of Admissions to Gray's Inn, 1521-1889, Together with the Register of Marriages in Gay's Inn Chapel, 1695-1754* (London: The Hansard Publishing Union, Limited, 1889), p. 358.



<sup>79</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.

<sup>80</sup> Chancery Record 2, p. 833; Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.

<sup>81</sup> TNA (PRO), Colonial Office 5, Vol. 720, pp. 127-128; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.i. See Chapter 5, “Railroading, 1710-1713,” at Notes 38-39.

<sup>82</sup> Since the members of the council say that a grand jury of the *province* presented Macnemara for the barratry, the presentment or indictment would have had to come in the provincial court.

<sup>83</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 266, 268-270. See Text above at Note 11; Chapter 3, “Early Troubles, 1703-1710,” at Notes 2-9.

<sup>84</sup> *Md. Arch.*, XXV, 234-235.

<sup>85</sup> For rape and attempted rape in eighteenth-century Maryland, see Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 289-291.

<sup>86</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVII, No. 16.

<sup>87</sup> See Chapter 5, “Railroading, 1710-1713,” at Notes 81, 86-88.

<sup>88</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>89</sup> Provincial Court Judgment Record, Liber T. P., No. 2, p. 1.

<sup>90</sup> *Ibid.*, pp. 2, 586-587.

<sup>91</sup> Rictor Norton, *Mother Clap's Molly House: The Gay Subculture in England, 1700-1830* (London: GMP Publishers Ltd., 1992), pp. 30, 58, 64, 81; Randolph Trumbach, "London's Sodomites: Homosexual Behavior and Western Culture in the Eighteenth Century," *Journal of Legal History*, XI, No. 1 (Fall 1977), p. 21.

<sup>92</sup> The two English laws that provided for the punishment for buggery do not mention attempted buggery, nor does William Hawkins or Sir William Blackstone. 25 Henry VIII, c. 6, in Pickering, *The Statutes at Large*, IV, 267-268; 2 Edward VI, c. 29, in *ibid.*, V, 325; 5 Elizabeth I, c. 17, in *ibid.*, VI, 208-209; Hawkins, *The Pleas of the Crown*, I, 6; Blackstone, *Commentaries*, IV, 215-216.

<sup>93</sup> Provincial Court Judgment Record, Liber T. P., No. 2, pp. 495, 576, 580, 587-588.

<sup>94</sup> *Ibid.*, Liber I. O., No. 1, p. 21; Anne Arundel County Court Judgment Record, Liber T. B., No. 3, p. 100; Prince George's County Court Record, Liber G, p. 261; Chancery Record 3, pp. 3, 7.

<sup>95</sup> Provincial Court Judgment Record, Liber T. P., No. 2, p. 584.

<sup>96</sup> *Ibid.*, Liber V. D., No. 1, p. 95; Liber V. D., No. 3, p. 227; Liber P. L., No. 4, pp. 91, 207-214, 219.

<sup>97</sup> 1718, c. 16, *Md. Arch.*, XXXVI, 525-527.

<sup>98</sup> Jacob Henderson to John Robinson, Bishop of London, 4 September 1718, in William Stevens Perry, ed., *Historical Collections Relating to the American Colonial Church* (5 vols. in 4; Hartford: The Church Press, 1870-1878; reprinted New York: AMS Press, 1969), IV, *Maryland*, pp. 114-115.

<sup>99</sup> Beatriz Betancourt Hardy, "Papists in a Protestant Age: The Catholic Gentry and Community in Colonial Maryland, 1689-1776," (Ph. D. dissertation: University of Maryland, 1993), pp. 165-166. For Macnemara's trip to England in 1718, see

Chapter 7, “Respectability, 1713-1719,” Note 86; Chapter 12 “Reinstatement and Outrage, 1719,” at Note 6ff.

<sup>100</sup> Provincial Court Judgment Record, Liber I. O., No. 1, pp. 107-118.

<sup>101</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>102</sup> Bond, ed., *Proceedings of the Maryland Court of Appeals, 1695-1729*, pp. 156-164.

<sup>103</sup> Baltimore County Court Proceedings, Liber I. S., No. A, pp. 334, 349, 350, 378, 398, 404-405.

<sup>104</sup> Charles County Court Record, Liber D, No. 2, pp. 7, 21, 72-73; Provincial Court Judgment Record, Liber I. O., No. 1, pp. 524-530. Macnemara entered his arguments at the previous court, the provincial court for April of 1713.

<sup>105</sup> Since the mayor of Annapolis was elected from among the aldermen, since the aldermen were elected from among the common-councilmen, and since Macnemara was mayor by June of 1716 (1719, c. 17, *Md. Arch.*, XXXVI, 529), if he was elected in a regular election he must have been elected mayor on 29 September 1715 and must have been a common-councilman and alderman before that date. See Second Charter of Annapolis, in Chancery Record 2, pp. 597-599, and in Riley, *The Ancient City*, pp. 87-88.

<sup>106</sup> Provincial Court Judgment Record, Liber V. D., No. 1, pp. 129-130; Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 18-19.

<sup>107</sup> Owings, *His Lordship’s Patronage*, p. 181.

<sup>108</sup> Chancery Record 3, pp. 65-68.

<sup>109</sup> For a discussion of these cases, see Chapter 7, “Respectability, 1713-1719,” at Notes 60-80.

<sup>110</sup> Chancery Record 3, pp. 531-532, 614-648.

<sup>111</sup> See Note 198 below.

<sup>112</sup> *Md. Arch.*, XXIX, 350-351, 391-392, 394-395.

<sup>113</sup> Since aldermen served during good behavior, Macnemara would have been elected only because of a vacancy on the board. No alderman would be elected on 29 September unless a vacancy occurred within a month before that date. A special election had to be held within a month of the vacancy. Second Charter of Annapolis, in Chancery Record 2, p. 598; Riley, *The Ancient City*, p. 88. See again Chapter 7, “Respectability, 1713-1719,” at Notes 169-172.

<sup>114</sup> Provincial Court Judgment Record, Liber V. D., No. 1, p. 360.

<sup>115</sup> See Text below at Note 127; Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 21-26.

<sup>116</sup> Baltimore County Court Proceedings, Liber I. S., No. A, p. 604. The fine for cursing or swearing was five shillings. 1704, c. 47, *Md. Arch.*, XXVI, 322.

<sup>117</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 3, p. 429.

<sup>118</sup> Provincial Court Judgment Record, Liber V. D., No. 1, p. 486; Liber V. D., No. 2, pp. 1, 4-6, 6-7.

<sup>119</sup> *Ibid.*, Liber V. D., No. 2, pp. 360-361; 1719, c. 17, *Md. Arch.*, XXXVI, 529.

<sup>120</sup> Prince George’s County Court Record, Liber G, pp. 721, 722, 763, 783, 788, 789; Liber H, pp. 3, 30, 37-38.

<sup>121</sup> *Ibid.*, Liber H, pp. 42-43.

<sup>122</sup> Since even in non-litigious actions the plaintiff chose his own attorney, Hart must have chosen Macnemara as his attorney here. Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 416-417.

<sup>123</sup> The Prince George’s County court for March of 1716 met on 27 March, and

the provincial court met on 1 May. Prince George's County Court Record, Liber H, p. 31; Provincial Court Judgment Record, Liber V. D., No. 1, p. 626; Liber V. D., No. 2, p. 0. This is an unnumbered page preceding page 1 in this liber.

<sup>124</sup> Provincial Court Judgment Record, Liber V. D., No. 1, pp. 486, 515, 518, 581, 582; Liber V. D., No. 2, pp. 4-6, 6-7.

<sup>125</sup> *Ibid.*, Liber V. D., No. 1, p. 486; Liber V. D., No. 2, p. 1. The details of Macnemara's alleged assault of John Navarre have not appeared.

<sup>126</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 3, pp. 402, 437-439, 439-440; Provincial Court Judgment Record, Liber V. D., No. 1, pp. 515, 515-516, 516; Liber V. D., No. 2, pp. 46-50, 50-56.

<sup>127</sup> Provincial Court Judgment Record, Liber V. D., No. 1, pp. 360, 565, 732-736.

<sup>128</sup> *Ibid.*, Liber V. D., No. 2, p. 63.

<sup>129</sup> We know that the session of the provincial court ended on 9 July 1716 because writs issued between sessions of a court were dated the last day of the previous session.

All writts Issueing out of this Court shall have Test from y<sup>e</sup>  
Last adjourment [*sic*] of the Court and shall be marked  
Underneath the Day of Issueing the same —

Charles County Court Record, Liber B, No. 2, p. 711. The same rule appears in *ibid.*, Liber S, No. 1, pp. 61-62, and in Frederick County Court Judgment Record, 1758-1760, p. 1072. See also Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1773*, pp. 503-506.

For writs dated 9 July 1716, see Provincial Court Judgments, Liber V. D., No. 2, pp. 158-159, 190-193.

<sup>130</sup> Sir George Clark, *The Later Stuarts, 1660-1714* (2nd edition; Oxford: The

Clarendon Press, 1955), pp. 240-243, and Genealogical Table; *Md. Arch.*, XXXIII, 480-481.

<sup>131</sup> *Md. Arch.*, XXX, 372-374, 409-410, 516-517.

<sup>132</sup> Provincial Court Judgment Record, Liber V. D., No. 2, p. 144.

<sup>133</sup> Provincial Court Judgment Record, Liber V. D., No. 2, pp. 362-364.

<sup>134</sup> *Ibid.*, Liber V. D., No. 3, p. 234; Liber P. L., No. 4, pp. 83-84.

<sup>135</sup> Chancery Record 3, p. 380. See also Chapter 1, "Character," Note 58.

<sup>136</sup> TNA (PRO), *Calendar of State Papers: Colonial Series*, XXX, No. 289; TNA (PRO), Colonial Office 5, Vol. 720, No. 15; *Md. Arch.*, XXXIII, 181-182, 258-259.

<sup>137</sup> Chancery Record 3, p. 401.

<sup>138</sup> *Md. Arch.*, XXXIII, 482, 571.

<sup>139</sup> Provincial Court Judgment Record, Liber V. D., No. 2, p. 381.

<sup>140</sup> But for the ambiguity about when Macnemara returned to the province, see again Chapter 1, "Character," Note 58.

<sup>141</sup> Provincial Court Judgment Record, Liber V. D., No. 2, p. 390.

<sup>142</sup> *Ibid.*, Liber V. D., No. 3, pp. 78-81.

<sup>143</sup> Owings, *His Lordship's Patronage*, p. 159.

<sup>144</sup> *Ibid.*, p. 114.

<sup>145</sup> *Md. Arch.*, XXXIII, 170.

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*, XXXVI, 530-532.

<sup>148</sup> Baltimore County Court Proceedings, Liber G. M., p. 125.

<sup>149</sup> Anne Arundel County Court Judgment Record, Liber R. C., pp. 31-32, 95.

<sup>150</sup> The Anne Arundel County court met on 13 August 1717, while the provin-

cial court met on 10 September 1717. *Ibid.*, p. 30; Provincial Court Judgment Record, Liber V. D., No. 3, p. 106.

<sup>151</sup> Provincial Court Judgment Record, Liber V. D., No. 3, p. 106.

<sup>152</sup> *Ibid.*, pp. 191-192.

<sup>153</sup> *Ibid.*, pp. 193-194, 194-195.

<sup>154</sup> *Ibid.*, pp. 195-196, 196-197. How the indictments were insufficient does not appear, but see Chapter 9, "Harassment by Indictment, 1712-1719," at Notes 8, after 79-82, 101-102.

<sup>155</sup> *Md. Arch.*, XXXVI, 530-532, 532-533, 533-534, 534; Provincial Court Judgment Record, Liber W. G., No. 1, p. 31.

<sup>156</sup> Chancery Record 3, p. 397-400; *Md. Arch.*, XXXIII, 127-130.

<sup>157</sup> Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, *Maryland*, p. 92. The procurator of office was the ecclesiastical commissary's legal representative in religious matters. *Black's Law Dictionary* (6th edition), p. 1207.

<sup>158</sup> Henderson's Visitation, 5 December 1717, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, *Maryland*, p. 95; Henderson's Answers to Queries, after 28 June 1721, in *ibid.*, p. 133.

<sup>159</sup> Fulham Papers, Lambeth Palace Library, No. 131 (microfilm); Nelson Waite Rightmyer, *Maryland's Established Church* (Baltimore: Church Historical Society for the Diocese of Maryland, 1956), pp. 69-70; Carol van Voorst, *The Anglican Clergy in Maryland, 1692-1776* (New York: Garland Publishing, Inc., 1989), p. 39.

<sup>160</sup> Jacob Henderson to John Robinson, Bishop of London, 17 June 1718, in Perry, ed., *Historical Collections Relating to the American Colonial Church*, IV, *Maryland*, pp. 110-111.

<sup>161</sup> *Md. Arch.*, XXXIII, 130.

<sup>162</sup> *Ibid.*; Chancery Record 3, pp. 413-414.

<sup>163</sup> We know that it was at the provincial court for April of 1718 that Bladen sent these three bills against Macnemara before the grand jury because Govert Loockerman was the foreman of the grand jury at that court (Provincial Court Judgment Record, Liber V. D., No. 3, p. 234), because the record there notes that the grand jury returned one indictment against Macnemara (*ibid.*), and because Govert Loockerman endorsed not only the two bills against Macnemara that the grand jury returned *ignoramus* (*ibid.*, pp. 260-261, 261-262) but also the one that it returned a true bill. *Ibid.*, Liber P. L., No. 4, pp. 83-84.

<sup>164</sup> *Ibid.*, Liber V. D., No. 3, pp. 260-261, 261-262.

<sup>165</sup> *Ibid.*, p. 234; Liber P. L., No. 4, pp. 83-84. For the Act of Grace or General Pardon of 1717 — 3 George I, c. 19 —, see Chapter 9, “Harassment by Indictment, 1712-1719,” Note 106.

<sup>166</sup> *Md. Arch.*, XXXIII, 170.

<sup>167</sup> *Ibid.*, pp. 134-135, 169-170.

<sup>168</sup> *Ibid.*, pp. 170-171.

<sup>169</sup> *Ibid.*, pp. 123, 205-206.

<sup>170</sup> *Ibid.*, pp. 208-209, 209.

<sup>171</sup> *Ibid.*, pp. 125-126, 127, 210.

<sup>172</sup> *Ibid.*, pp. 123, 127-130, 205-206, 210.

<sup>173</sup> *Ibid.*, pp. 134-135, 141-144, 220.

<sup>174</sup> Compare for example the attendance during this period in the chancery court in Chancery Record 3, pp. 368, 376, 387, 397, 402, 403, 411, 414, 415, 424, to the attendance in the upper house in *Md. Arch.*, XXXIII, 3, 13, 19, 31, 119, 125, 133,



134, 149, 151, 158, 166, 167, 173, 179, 185, 189, 193.

<sup>175</sup> *Md. Arch.*, XXXIII, 168-169.

<sup>176</sup> The four provincial justices were William Holland, Samuel Young, Thomas Addison, and Richard Tilghman. *Ibid.*, p. 172. Thomas Smith, the fifth provincial justice who was a member of the upper house (Provincial Court Judgment Record, Liber V. D., No.1, pp. 626-628; Liber P. L., No. 4, pp. 91-92), was present in the upper house on 2 and 3 May (*Md. Arch.*, XXXIII, 158, 163) but did not attend on the fifth or thereafter. *Ibid.*, pp. 166-197. He died in May of 1719. *Biographical Dictionary*, II, 750.

<sup>177</sup> *Md. Arch.*, XXXIII, 166, 167, 171-172.

<sup>178</sup> *Ibid.*, pp. 174-175, 249-250, 252; Chapter 7, "Respectability, 1713-1719," at Notes 59-79.

<sup>179</sup> *Ibid.*, pp. 181-182, 258-259.

<sup>180</sup> *Ibid.*, pp. 259-260.

<sup>181</sup> *Ibid.*, pp. 191, 252, 272-273, 277, 280-281.

<sup>182</sup> *Ibid.*, pp. 270-171.

<sup>183</sup> Apparently discovering only by accident that the assembly was considering the bill to disbar him, Macnemara petitioned for the right to appear before the lower house (*ibid.*, p. 305), but in refusing to allow him to appear both houses used the excuse that he had petitioned too late. *Ibid.*, pp. 310, 314, 382. The speed with which the assembly completed action on the bill (see Text immediately following) makes it appear that it was acting with as much secrecy as possible in order not to give Macnemara an opportunity to defend himself. See Chapter 11, "Disbarred Again, 1718," at Notes 88-90; Chapter 12, "Reinstatement and Outrage, 1719," after Note 8.

<sup>184</sup> *Md. Arch.*, XXXIII, 189-190, 191-192, 270-271, 272, 273.

<sup>185</sup> *Ibid.*, pp. 197, 284; 1718, c. 16, *Md. Arch.*, XXXVI, 525-527.

<sup>186</sup> *Md. Arch.*, XXXIII, 194, 276.

<sup>187</sup> Chancery Record 3, p. 391; Calvert Papers, No. 260 (Maryland Historical Society, Baltimore). I thank Ms. Jennifer A. Bryan, former Curator of Manuscripts at the Maryland Historical Society in Baltimore, for sending me a copy of this document.

<sup>188</sup> Anne Arundel County Court Judgment Record, Liber R. C., pp. 201, 207, 211, 239, 267, 315, 373, 510, 569; *Md. Arch.*, XXXVI, 534.

<sup>189</sup> Provincial Court Judgment Record, Liber P. L., No. 4, pp. 3, 76-77.

<sup>190</sup> *Ibid.*, Liber W. G., No. 1, p. 31; *Md. Arch.*, XXXVI, 532-533.

<sup>191</sup> See Text above at Notes 97-99, and Chapter 9, "Harassment by Indictment, 1712-1719," Note 16 and Text at Notes 119-120.

<sup>192</sup> Provincial Court Judgment Record, Liber V. D., No. 1, p. 95; Liber V. D., No. 3, p. 227; Liber P. L., No. 4, pp. 91, 207-214, 219.

<sup>193</sup> *Md. Arch.*, XXXIII, 298, 302-303, 367, 372-373.

<sup>194</sup> *Ibid.*, pp. 302-303, 372-373.

<sup>195</sup> 1719, c. 4, *Md. Arch.*, XXXIII, 461-463.

<sup>196</sup> 1719, c. 17, *Md. Arch.*, XXXVI, 528-530.

<sup>197</sup> *Md. Arch.*, XXXVI, 530-534. Because of the decision of the editor, Bernard C. Steiner, the representation of the provincial justices against Macnemara is not printed in the *Archives* with the law against him, but Steiner refers the reader to *Md. Arch.*, XXXIII, 171-172, where it is printed. *Md. Arch.*, XXXVI, 534.

<sup>198</sup> Macnemara died sometime between 11 August and 8 September 1719. Anne Arundel County Court Judgment Record, Liber R. C., pp. 427, 510; Provincial Court

Judgment Record, Liber W. G., No. 1, pp. 1, 31. See also Chapter 1, “Character,” Note 11.

<sup>199</sup> See Chapter 7, “Respectability, 1713-1719,” Note 86.

<sup>200</sup> Provincial Court Judgment Record, Liber V. D., No. 4, pp. 225, 244.

<sup>201</sup> 1719, c. 17, *Md. Arch.*, XXXVI, 528-534.

<sup>202</sup> Provincial Court Judgment Record, Liber V. D., No. 3, pp. 260-261, 261-262.

<sup>203</sup> Baltimore County Court Proceedings, Liber G. M., p. 125.

<sup>204</sup> Provincial Court Judgment Record, Liber V. D., No. 1, pp. 360, 565, 732-736; Liber V. D., No. 2, pp. 144, 390.

<sup>205</sup> *Maryland Gazette*, 13, 27 January 1748, 20 April 1758; Provincial Court Judgment Record, Liber W. G., No. 1, pp. 545-546; Liber P. L., No. 7, pp. 301-303; Liber B. T., No. 3, pp. 269, 293-294; Liber D. D., No. 19, p. 3; Prince George’s County Court Record, 1771-1773, pp. 312, 326-328.

*Chapter 16*  
*A Man Ahead of His Time*

Almost from the time of his arrival in Maryland in the spring of 1703 Thomas Macnemara exhibited the qualities that set him off from other prominent Marylanders of the period. While he could not fully escape the legal and political values of his time, he could challenge them, and the challenges kept him in trouble for most of his life.

In the environment of the operative values of early eighteenth-century Maryland, as opposed to its purported values, Macnemara had four fundamental flaws in his character. First, he was competent at his job. Apparently he was just too good a lawyer for the comfort of authority and the lesser lawyers around him. He could make such less accomplished lawyers as Daniel Dulany and William Bladen look very ignorant or incompetent. Even his enemies agreed that he possessed outstanding “Capacity and Abilities” as an attorney.<sup>1</sup> He appears to have had a concept of due process and legal procedure that was too sophisticated for the primitive authority of the period even to understand, much less to embrace. His unwillingness to accept the reckless legal procedures that he found in the province must have offended other lawyers as well as the justices who accepted those procedures — in their “humble Representation,” after all, four of the provincial justices explicitly expressed their

hostility toward him for “his Artfull and Audacious managem<sup>t</sup> of the Subtile and Tricking Part of the Law” and threatened to resign as provincial justices if he was allowed to continue to practice in that court<sup>2</sup> —, and they found it easier to try to get rid of him than to try to learn something themselves or to accept that even suspects and defendants *should* have some rights.

Second, Macnemara had the courage that enabled him to exploit his talents as a lawyer. As attorney for Maurice Birchfield, the surveyor general of customs, he was willing to prosecute even some of the most prominent people in the province — including Thomas Brooke, the ranking member of the council and therefore of the upper house,<sup>3</sup> and William Bladen himself — for debts they allegedly owed to the Crown.<sup>4</sup> He was willing to defend even Catholics at a time when Catholics could not defend themselves, and he was vigorous enough in their defense that his enemies either believed or were able to pretend to believe that secretly he was still a Catholic himself.<sup>5</sup>

Macnemara also showed his courage when in the quarrel over the charters of Annapolis he led the opposition to John Seymour’s first charter, which Seymour issued without consulting the delegates and in which he reduced participation in the government of the city. In the process Macnemara was instrumental in establishing two precedents for the limitation of the executive. First, as the leader of the petitioners against this charter and as the spokesman for the petitioners in the lower house of the assembly he was instrumental in forcing Seymour to back down and issue a new charter with a wider franchise than he had provided in his first charter. Second, the delegates forced Seymour to allow the assembly, and therefore the lower house, to participate in establishing the second charter by passing a law “Confirming and Explaining” it.<sup>6</sup>

Macnemara's third fault was that he was honest. His courage permitted him to possess the honesty that is impossible without it and that is anathema to the authority of any age. He did not try to hide what he thought: apparently there was no subtlety in him. He admitted to Governor John Hart's face that in 1716 he tried to get him fired as governor;<sup>7</sup> in October of 1717 he refused to back down when Hart denied that he had called him a "Rogue and a Rascal";<sup>8</sup> and on 24 February 1717/18 he refused to agree that he had apologized to Hart when Hart insisted he had.<sup>9</sup>

Probably the officials of eighteenth-century Maryland would have liked Macnemara better if he had been more devious. Unscrupulous people in this corrupt age<sup>10</sup> could bargain with other unscrupulous people: it is very difficult for an unscrupulous person to bargain with an honest one.

Fourth, apparently Macnemara had an occasional pang of compassion. Apparently the pangs did not come often, but in the early eighteenth century they were not supposed to come at all. In a civil case at the Anne Arundel County court for June of 1705 he defended Susanna Davis for nothing,<sup>11</sup> and at least twice he helped servants get their freedom dues from masters who refused to pay. At the Anne Arundel County court for November of 1706 he helped Francis Harrison recover his freedom dues from Samuel Dorsey,<sup>12</sup> and at the Anne Arundel County court for August of 1707 he helped Thomas Bayly recover his freedom dues from Thomas Brown.<sup>13</sup> Finally, at the Baltimore County court for August of 1717 he helped Thomas Williamson gain his freedom from Andrew Berry, whom Williamson had already served for a longer period than "he was Adjudged."<sup>14</sup>

But clearly Macnemara was not *all* compassion. Apparently he did try to keep Manus Knark in his service when he had no right to it;<sup>15</sup> he got almost two-and-a-half more years of service from Robert Morelen after Morelen ran away and was gone for

only sixteen days;<sup>16</sup> he might have abandoned John Edwards when he was no longer able to work;<sup>17</sup> apparently he did abuse his servant Margaret Deale;<sup>18</sup> apparently he did beat his wife Margaret;<sup>19</sup> he might have bitten off Matthew Beard's ear in a fight even though a petit jury acquitted him of assaulting Beard;<sup>20</sup> possibly he did assault Benjamin Allen, although he might have pleaded guilty to the alleged assault only to avoid being tried for the alleged attempted buggery;<sup>21</sup> and he did kill Thomas Graham, though the petit jury agreed — three times, in spite of the pressure of the provincial justices to find him guilty of murder or at least of manslaughter — that the killing was an accident.<sup>22</sup>

If we consider only this catalogue of Macnemara's crimes, alleged crimes, and incivilities without trying to fit it into the context of his life and the life of early eighteenth-century Maryland, however, as free-wheeling historians have consistently done, we get a very skewed view of the man. Macnemara's enemies made a lot of his alleged violence, but he appears to have been more often the victim than the aggressor. In April of 1705 Thomas Roper paid a fine of one hundred pounds of tobacco after he pleaded guilty to assaulting Macnemara.<sup>23</sup> In May of 1707 James Carroll had to give security of twenty pounds sterling after Macnemara complained that Carroll had assaulted him, but at the provincial court for April of 1708 the justices discharged that recognizance.<sup>24</sup> In November of 1707 the grand jury at the Anne Arundel County court indicted William FitzRedmond for libeling Macnemara, but at the provincial court for July of 1708 the justices quashed the indictment.<sup>25</sup> In March of 1709/10 Edward Carroll admitted that he had assaulted Macnemara and paid a fine of ten shillings.<sup>26</sup> In 1710 the provincial justices first tried to force the petit jurors to bring in a verdict that would allow them to sentence Macnemara to hang or at least to a branding and then, when they failed at that, illegally raised Mac-

nemara's crime in the death of Thomas Graham from the petit jury's chance-medley to their own manslaughter and ordered him branded on the hand anyway after he pleaded benefit of clergy.<sup>27</sup> Juries acquitted Macnemara of assaults on Matthew Beard in 1704<sup>28</sup> and William Dobson in 1716,<sup>29</sup> apparently because Beard had attacked him first and because Dobson had attacked his servant, James Horsley. In the troubles with John and Mary Navarre it appears that the charges might have resulted from a couple of brawls for which it was difficult or impossible to fix exact responsibility.<sup>30</sup>

Thus Macnemara's violence and exploitation of others did not make him all that different from other men of his age. If he was sometimes violent, men who claimed to be more civilized than he was were ordering people whipped, pilloried, branded, bored, cropped, and hanged all the time, and they made no apologies for their atrocities. If Macnemara assaulted people in person — though the cases of Matthew Beard and William Dobson and possibly those of John and Mary Navarre provide some evidence that he fought only when somebody attacked him or one of his dependents first —, many of his respectable enemies were no doubt regularly assaulting servants and slaves by proxy and might even have been doing some personal beating themselves, as the vicious William Byrd and his wife were doing during this same time in Virginia.<sup>31</sup> If Macnemara accidentally killed Thomas Graham, the provincial justices deliberately tried to murder Macnemara judicially. Position justified everything.

Thus Thomas Macnemara possessed four of the most dangerous qualities that a human being can have: competence, courage, honesty, and at least a little compassion. Such a person is likely to be in trouble most of the time in any age.

Macnemara might have had a fifth fault. Like many other Marylanders of the



eighteenth century, he might have drunk too much, though there is only one recorded occasion on which he drank at all. And on that occasion, when in April of 1718 he offended the delegates when he asked for a copy of the speech in which Hart attacked him before the assembly, he told the delegates that he was sorry if he had offended them even though since he had been drinking wine he could not remember saying anything offensive.<sup>32</sup> And apparently on the basis of this lone incident Aubrey Land can refer to Macnemara's "prowess at the punch bowl"<sup>33</sup> and thus provide him with his modern reputation as a drunk.<sup>34</sup>

Even if Macnemara did drink a lot, his drinking probably would have been the least of his problems. While drunkenness was illegal,<sup>35</sup> before the age of the fast automobile and the speed-boat the drunk ordinarily hurt only himself and his own family. The ruling elite of the colonial South had a huge tolerance for drunkenness among their own: many respectable people, one suspects, must have been half drunk half the time and completely drunk the rest of the time. But drunkenness was a socially acceptable vice; competence, courage, honesty, and compassion were not.

That a man whom authority despised and distrusted as intensely as it despised and distrusted Macnemara could become clerk of the lower house, a common-councilman, then alderman, and then mayor of Annapolis and then alderman again must reveal a dangerous division in the population of the province; his becoming naval officer of Patuxent must mean that he had the trust of Baltimore and Guilford; and his becoming attorney for Maurice Birchfield, the surveyor general of customs, and finally the procurator of office for Jacob Henderson, the ecclesiastical commissary of the Western Shore, must mean that he had the confidence of at least two British officials. The newly emerged Protestant ruling class<sup>36</sup> must have felt very insecure,

and it could not willingly tolerate the presence of an attorney who was fearless in the face of authority, who through his performance in the courtroom in criminal actions was teaching the population some of its legal rights, who through his consistent and successful challenges of the incompetence of the minions of authority threatened to weaken the position of the powerful few who lived off the labor of the rest of the population, and who might become a charismatic leader either of the Catholics or of the dispossessed. Or both. One of a very few who was willing to challenge authority, he paid a heavy price for his impertinence.

During their sessions of 1718 and 1719 nothing preoccupied Governor John Hart and the assembly more than Thomas Macnemara and the Catholics did, and their proceedings against Macnemara have all of the qualities of a vendetta in which with their insupportable allegations in the preambles of the laws they passed against him and in their reports to Baltimore and Guilford they skirted the edge of the truth. In other instances, as in the council's letter to the Board of Trade on 18 July 1712<sup>37</sup> and in Hart's speech to the assembly on 6 April 1720,<sup>38</sup> authority did not hesitate to fracture the truth.

No doubt Macnemara also failed accurately to report those things that might have been most damaging to him, and Baltimore and Guilford had to try to sort out the competing fictions. Probably the difficulty of knowing what was actually going on in the province accounts for their apparent vacillation, for their appearing to support both Hart and Macnemara at the same time and thus their increasing rather than decreasing the confusion and the resentment of everyone involved in the disputes.<sup>39</sup>

Why the delegates would support Hart, whom they did not trust and appear not to have liked very much in spite of their fawning messages to him, against a man whom they considered respectable enough to be their clerk for just over two years

and whom others considered respectable enough to be a common-councilman, alderman, and mayor of Annapolis, the naval officer for Patuxent, the attorney for the surveyor general of customs, and the procurator of office for the ecclesiastical commissary of the Western Shore, can be explained only by the dynamics of politics. No doubt the delegates' flattery of Hart was the purely conventional flattery of the age and no indication of what they actually thought of him. He had either power or the appearance of power, and the legislators, looking out for number one,<sup>40</sup> submitted. But the delegates were able without any apparent embarrassment to turn against Hart soon enough when they knew that he could no longer do anything either for them or to them. Once he left the province in May of 1720 they expressed their suspicion and apparent fear that if Thomas Brooke had "not taken . . . Early Care to qualifie himself" as chief executive of the province as president of the council Hart might have refused to leave when Baltimore and Guilford had ordered him to leave.<sup>41</sup> Clearly the delegates were glad to be rid of him.

Regardless of the position of Baltimore and Guilford, there was no way that Macnemara could win the battle with Hart and the assembly. Together the governor and the assembly, entirely unprincipled and willing to ignore their instructions from Baltimore and Guilford and to misrepresent as they chose to support their agenda, could pass laws against Macnemara as fast as Baltimore and Guilford could disallow them, and there was nothing that Baltimore and Guilford could do about it except to continue to disallow the laws and to send additional instructions for Hart and the assembly to ignore. The governor and the assembly could guarantee that the only time Macnemara would be able to practice law in Maryland would be from the time a disallowance arrived in the province until the assembly had time to pass its next law against him. That meant that he would not be able to practice law at all.

It turned out that Hart and the assembly had to engage in this tactic only once. Macnemara, to Hart's great satisfaction,<sup>42</sup> conveniently died.

It is not too much to say that John Hart and his confederates hounded Thomas Macnemara to his grave. In the jungle that was early eighteenth-century Maryland, Macnemara in his more thoughtful moments might have considered himself lucky to have survived for as long as he had.<sup>43</sup>

## *Chapter 16*

### *A Man Ahead of His Time*

<sup>1</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXXIII, 170.

<sup>2</sup> *Ibid.*, p. 172; Chapter 11, “Disbarred Again, 1718,” at Notes 59-74.

<sup>3</sup> *Ibid.*, XXV, 327, 336, 338, 352; Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, *A Biographical Dictionary of the Maryland Legislature, 1635-1789* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 42, 43, 44, 172.

<sup>4</sup> See Chapter 7, “Respectability, 1713-1719,” at Notes 59-80.

<sup>5</sup> Council of Maryland to Board of Trade, 18 July 1712, The National Archives (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>6</sup> 1708, c. 7, “An Act Confirming and Explaining the Charter to the City of Annapolis, *Md. Arch.*, XXVII, 358-360; Chapter 3, “Early Troubles, 1703-1710,” at Notes 110-175; C. Ashley Ellefson, “Governor John Seymour and the Charters of Annapolis - 1708,” Volume 749 of Archives of Maryland Online, at <http://www.aomol.net/000001/000749/html/index.html>.

<sup>7</sup> *Md. Arch.*, XXXIII, 181-182, 258-259.

<sup>8</sup> Chancery Record 3, p. 397; *Md. Arch.*, XXXIII, 127.

<sup>9</sup> *Md. Arch.*, XXXIII, 130.

<sup>10</sup> “Public life may often have been equally corrupt,” Nesca A. Robb says of the age of William III, but “it can rarely have been more openly or shamelessly corrupt” (Nesca A. Robb, *William of Orange: A Personal Portrait* (2 vols.; New York: St. Martin’s Press, 1962-1966), II, 499), and Maurice Ashley writes of the “pious overtones and unscrupulous methods of public and private conduct” during the reign of Queen Anne. Maurice Ashley, *England in the Seventeenth Century* (2nd edition; Baltimore: Penguin Books Inc., 1954), p. 244. It should surprise nobody that the values of England were the values of the colonies.

<sup>11</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 36-37, 37.

<sup>12</sup> *Ibid.*, p. 413.

<sup>13</sup> *Ibid.*, p. 567.

<sup>14</sup> Baltimore County Judicial Record, Liber G. M., p. 127.

<sup>15</sup> Anne Arundel County Court Judgment Record, Liber T. B. No. 1, p. 148; Chapter 1, “Character,” at Note 77.

<sup>16</sup> Baltimore County Judicial Record, Liber G. M., p. 7; Chapter 1, “Character,” at Notes 81-83. Imposing the maximum penalty of ten days for one for running away, as well as imposing long additional terms to reimburse masters for the costs of recapturing the runaway servants, was common practice. See Chapter 1, “Character,” Note 83; 1704, c. 23, *Md. Arch.*, XXVI, 254; 1715, c. 44, *Md. Arch.*, XXX, 283-384; 1719, c. 2, *Md Arch.*, XXXIII, 459-460.

<sup>17</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, p. 325; Liber T. B., No. 3, p. 110a; Chapter 1, “Character,” at Notes 78-80.

<sup>18</sup> Anne Arundel County Court Record, Liber T. B., No. 1, p. 150; Chapter 1, “Character,” at Note 76.

<sup>19</sup> See Chapter 4, “Not-So-Loving Spouses, 1707-1708.”

<sup>20</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 266, 268-270; Chapter 3, “Early Troubles, 1703-1710,” at Notes 2-9.

<sup>21</sup> See Chapter 5, “Railroading, 1710-1713,” at Notes 93-104, 111-113.

<sup>22</sup> See *ibid.*, at Notes 1-93, 105-110, 113-115.

<sup>23</sup> Provincial Court Judgment Record, Liber T. L., No. 3, pp. 555, 559, 566b; Liber T. B., No. 2, p. 75; Chapter 3, “Early Troubles, 1703-1710,” at Notes 20-22.

<sup>24</sup> Provincial Court Judgment Record, Liber P. L., No. 1, pp. 213, 237; Liber P. L., No. 2, p. 24; Chapter 3, “Early Troubles, 1703-1710,” at Notes 25-27.

<sup>25</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 1, pp. 646, 647, 648, 673, 686, 695-697; Provincial Court Judgment Record, Liber P. L., No. 2, pp. 122, 242-245; *Md. Arch.*, XXXIII, 503, 532, 620, 621; Chapter 3, “Early Troubles, 1703-1710,” at Notes 30-41.

<sup>26</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 2, pp. 114, 115, 119, 121; Chapter 3, “Early Troubles, 1703-1710,” at Notes 236-238.

<sup>27</sup> See Text above at Note 22.

<sup>28</sup> See Text above at Note 20.

<sup>29</sup> Provincial Court Judgment Record, Liber V. D., No. 1, pp. 509, 565, 732-736; Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 21-26.

<sup>30</sup> Anne Arundel County Court Judgment Record, Liber T. B., No. 3, pp. 402, 411-412, 437-439, 439-440; Provincial Court Judgment Record, Liber V. D., No. 1, pp. 486, 515, 515-516, 516, 518, 581, 582; Liber V. D., No. 2, pp. 1, 4-6, 6-7, 46-50, 50-56; Chapter 9, “Harassment by Indictment, 1712-1719,” at Notes 32-51.

<sup>31</sup> William Byrd, *The Secret Diary of William Byrd of Westover, 1709-1712*, ed. Louis B. Wright and Marion Tinling (Richmond: The Dietz Press, 1941), pp. 79, 84,

221, 240, 241, 316, 341, 384, 419, 495, 511, 514, 540, 573, 585. Often Byrd had somebody else do the whipping (*ibid.*, pp. 148, 192, 337, 338, 412, 533, 550-551, 562), and sometimes it is not clear whether he or someone else did the whipping. *Ibid.*, pp. 38, 46, 53, 84, 112, 119, 224, 307, 412, 564. He might also kick a servant. *Ibid.*, p. 540.

On one occasion Byrd beat “little Jenny” too much and was sorry for it afterward (*ibid.*, p. 221), and on another occasion he beat Anaka “a little unjustly” and again was sorry for it. *Ibid.*, p. 514.

Byrd also beat his cousin Susan (*ibid.*, p. 295) and Billy Wilkins (*ibid.*, pp. 495, 573) or had somebody else beat Billy Wilkins. *Ibid.*, p. 562.

Byrd’s wife also whipped people (*ibid.*, pp. 34-35, 579) or had somebody else whip them. *Ibid.*, pp. 481, 512, 533. On one occasion it is unclear whether she or somebody else did the beating. *Ibid.*, p. 462. She also beat a slave with the fire-tongs. *Ibid.*, p. 494.

<sup>32</sup> *Md. Arch.*, XXXIII, 208-209, 209.

<sup>33</sup> Aubrey C. Land, *The Dulanys of Maryland: A Biographical Study of Daniel Dulany, the Elder (1685-1753) and Daniel Dulany, the Younger (1722-1797)* (Baltimore: Maryland Historical Society, 1955; reprinted Baltimore: The Johns Hopkins Press, 1968), p. 16. Land has no citation to support his claim of Macnemara’s “prowess at the punch bowl” and thus appears to create the impression of Macnemara’s drunkenness out of almost whole cloth. Land’s first chapter, however, is inadequately documented throughout. I am not competent to judge the quality of the documentation in the rest of the book.

<sup>34</sup> Although I have taken no formal poll, among the people who work in the history of Maryland to whom I have talked about Macnemara and who have already



known something about him the consensus appears to be that he was a drunk.

<sup>35</sup> After 1658, c. 9, *Md. Arch.*, I, 375, which expired after three years, I have not found another law against drunkenness until 1715, c. 34, *Md. Arch.*, XXX, 243-248, though by 1696, c. 10, *Md. Arch.*, XIX, 418-420, the assembly did prohibit drinking on Sunday. On 16 September 1704 the upper house sent Governor John Seymour's proclamation prohibiting "Excessive drinking Blasphemy prophane swearing and Cursing Lewdness prophanation of the Lords Day or other dissolute immoral and disorderly Practices" to the lower house, which approved it on the eighteenth. *Md. Arch.*, XXVI, 56, 59-61, 157.

<sup>36</sup> David W. Jordan, "Political Stability and the Emergence of a Native Elite in Maryland," in Thad W. Tate and David L. Ammerman, eds., *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society* (Chapel Hill: The University of North Carolina Press, 1979), pp. 269, 271, 273; David W. Jordan, "Sir Thomas Lawrence, Secretary of Maryland: A Royal Placeman's Fortunes in America," *Maryland Historical Magazine*, LXXVI, No. 1 (March 1981), p. 33; David W. Jordan, "Elections and Voting in Early Colonial Maryland," *ibid.*, LXXVII, No. 3 (Fall 1982), p. 258; David W. Jordan, *Foundations of Representative Government in Maryland, 1632-1715* (New York: Cambridge University Press, 1987), pp. 147-157, 158, 181, 208, 226, 230, 235.

Jordan, however, consistently refuses to use the term "ruling class."

<sup>37</sup> Council of Maryland to Board of Trade, 18 July 1712, TNA (PRO), Colonial Office 5, Vol. 720, pp. 123-127.

<sup>38</sup> *Md. Arch.*, XXXIII, 482, 571.

<sup>39</sup> The conflict between John Hart and Thomas Macnemara illustrates the difficulty of governing the colonies from England. The officials in England were depend-

ent on the information they got from the colonies, and they could never be sure whether their information was right or wrong.

Officials in the colonies could defy the authorities in England, as Hart and the assembly defied Baltimore and Guilford by passing the second act against Macnemara after Baltimore and Guilford had told them to pass a general act that would make the particular act unnecessary, and the officials in England could respond to the defiance only with reprimands of the colonial officials and disallowance of unacceptable pieces of legislation. In the meantime the unacceptable legislation against Macnemara was in force. Hart and the members of the assembly could have things pretty much their own way, and they must have known it.

<sup>40</sup> T. H. Breen, "Looking Out for Number One: Conflicting Cultural Values in Early Seventeenth-Century Virginia," *The South Atlantic Quarterly*, LXXVIII, No. 3 (Summer 1979), pp. 342-360.

<sup>41</sup> *Md. Arch.*, XXXIV, 9, 67, 107-108.

<sup>42</sup> *Ibid.*, XXXIII, 482, 571.

<sup>43</sup> In light of the careers of Thomas Macnemara and his adversaries, we probably can be forgiven for doubting the claim of Lois Carr, Russell Menard, and Lorena Walsh that by 1717 "public life had lost its rough-and-tumble quality." Lois Green Carr, Russell R. Menard, and Lorena S. Walsh, *Robert Cole's World: Agriculture and Society in Early Maryland* (Chapel Hill: The University of North Carolina Press, 1991), p. 166.

And probably Macnemara would not have agreed with Bernard C. Steiner that the change of Maryland from a proprietary to a royal colony "had undoubtedly been for the benefit of the province." Bernard C. Steiner, *The Restoration of the Proprietary of Maryland and the Legislation Against the Roman Catholics During the*

*Governorship of Capt. John Hart (1714-1720)*, in *Annual Report of the American Historical Association* (2 vols.; Washington: Government Printing Office, 1899), I, 231. Macnemara fared about the same under both regimes.

In recent years some historians have played down the ruthlessness of life during the colonial period by emphasizing the importance of “networks” in reducing its harshness. In this emphasis on networks, these historians reveal no apparent appreciation of the tension, fear, and often positive terror that must have existed in colonial Maryland. Lorena S. Walsh, “Community Networks in the Early Chesapeake,” in Lois Green Carr, Philip D. Morgan, and Jean B. Russo, eds., *Colonial Chesapeake Society* (Chapel Hill: The University of North Carolina Press, 1988), pp. 200-241; Michael Graham, “Meetinghouse and Chapel: Religion and Community in Seventeenth-Century Maryland,” in *ibid.*, pp. 242-274; Carr, Menard, and Walsh, *Robert Cole’s World*, pp. 137-142.

James Horn, in “Adapting to a New World: A Comparative Study of Local Society in England and Maryland, 1650-1700,” in Carr, Morgan, and Russo, eds., *Colonial Chesapeake Society*, pp. 133-175, especially pages 164-165, 167, and 173, appears to be less sanguine than the others.

C. Ashley Ellefson  
Professor of History Emeritus  
SUNY Cortland  
[aellefson@cortland.edu](mailto:aellefson@cortland.edu)

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