

The Legal Issues

There were a number of historically interesting legal issues that arose in the course of the dispute between the Earl of Warwick and Perient Trott. These are the headlines.

1. The principal legal basis for the Warwick family's claim to recover the shares from Trott was that the property was the subject of a legal 'entail', which (they claimed) meant that the 3rd Earl had no legal right to transfer the property to Trott in the first place. Fans of Downton Abbey will already know what an entail is. This form of transfer apparently came across with the Normans. By the Second Statute of Westminster in 1285, *de donis conditilibilis*, conditional gifts were regulated to stop abuses, and in effect, a gift by deed that was subject to an entailment conferred (the equivalent of) a life interest on the donee, not an absolute interest in possession.
2. So, it was argued by his successors that Robert the 3rd Earl of Warwick, who had received the transfer of the shares subject to an entailment, had not derived the legal right to sell the shares to Trott. So the Warwick family claimed it back.
3. Trott answered that because Bermuda was *terra incognita* when the statute of Westminster was passed in 1285, it did not apply to lands outside England. Apparently this was a seriously respectable legal argument at the time.
4. Trott and Charles the 4th Earl of Warwick had agreed to be bound by the decision of the Company as to their respective claims, and never again to contest the matter. Trott argued that once the 4th Earl failed to repay the purchase price as ordered, and the Company had declared that in that event Trott would be the owner forever, Trott was the owner. A bit like a binding arbitration agreement?
5. Moreover, Trott said that as the 4th Earl died leaving no male heirs, the reversion went back to the 2nd Earl's heirs, which was the 3rd Earl's estate, from whom Trott had (in effect) derived his title.
6. A more subtle argument was that the title to the land was always vested in the Company, not the person who owned the shares in the Company; this was reflected in the Company's constitution, so that at best the 3rd Earl had an equitable interest in the land. The Deed of transfer of ownership of the shares to the 3rd Earl from his father contained in the entail was never registered with the Company, and so the purported transfer was not effective, according to the Company's (bye) laws, and "...the Equitie of concealed uses binds not, neither the Company, or Mr Trott, nor the Land, neither in Law or Conscience"; but the 3rd Earl of Warwick's transfer to Trott was registered and made binding and effective by the Company (albeit late) and therefore (so it was argued) conferred an absolute title upon Trott.
7. In the third round of the land dispute, the husbands of the surviving female line of the 2nd Earl of Warwick's family claimed the shares back on the entailment theory described above, "*in right of their wives*". But this time, a different legal tactic was deployed.

Votes were cast at Company meetings according to the number of men in the room; there does not appear to have been a mechanism for a poll vote, counting the number of shares held by the voters, although this is not entirely clear. At meetings at which Trott was not present, and at which his supporters did not command a majority in number, the majority of members present, at the behest of the Warwick faction, simply passed a resolution on a show of hands, declaring that the shares owned by Trott were to be transferred back to the Warwick family, and Trott's rights to the land were in effect immediately expropriated. The Order was carried back to Bermuda and executed (by Sir John Heydon, of course, over the objections of his Council).

8. Trott's lands in Bermuda were "*extended*" or seized to pay the fines imposed for failure to pay duty. Trott's attempts to seek redress in the court in Bermuda were frustrated by a refusal to allow him to prosecute his

case or enforce his judgments for arrears of rent, on the basis that it was not his land, according to the Company.

9. The record of Trott's ownership of the shares was "*raised*" from the record books, (but luckily survived).
10. Trott's protests in his two pamphlets protesting against the 'unjust' and 'illegal' actions of the Company. The first publication was sent to Bermuda to solicit support from the Bermudians but Sir John suppressed it as being false and slanderous, and all copies in Bermuda were seized and publicly burned in St George's town square.

In 1679 Trott, William Righton and other merchants and landowners in Bermuda petitioned the English Parliament with a litany of complaints against the imposition of unlawful taxes and breaches of their rights of free trade. The Petition was ultimately heard, after much delaying by the Company. In the end only two of the numerous (and apparently meritorious) complaints were specifically upheld by the Parliamentary Committee of Lords of Colonies and Plantations in London. And that was enough.

First, the Company had purported to determine property rights by a vote at a company meeting, not by decision in a court of law. This was declared to be unlawful. *Magna Carta*, anybody? This was the basis on which the Warwick family must likely have settled with Trott's executors, and returned title to Trott's estate in 1684.

Second, apparently the local Governor in Bermuda, our old friend Sir John Heydon, did not allow anyone to send letters or petitions of complaint about him to London, and exercised a censorship of all outgoing correspondence from Bermuda. This was declared to be contrary to law. However, Sir John (perhaps predictably) escaped any reprobation for his part in all these events, although he was recalled to London to answer an enquiry. The land now known as the Heydon Trust in Sandy's Parish was originally land he had inherited after his mother's death in 1643.

The Committee of Lords of Colonies and Plantations required the Company to accept the rule of law, and inexplicably the Company refused or failed to do so. A Writ of '*Quo Warranto*' was issued, and the Company's Charter was recalled in June 1684. Bermuda was then established as a Crown Colony of England, and no longer operated as a private 'Honourable Company of Adventurers'.

