THE
CARIBBEAN VICE ADMIRALTY COURTS
1763-1815

By
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INDISPENSABLE AGENTS OF AN
IMPERIAL SYSTEM

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A Thesis
Submitted to the Faculty of Graduate Studies
in Partial Fulfilment of the Requirements
for the Degree
Doctor of Philosophy

McMaster University
October 1968
TITLE: The Caribbean Vice Admiralty Courts, 1763-1815; Indispensable Agents of an Imperial System

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NUMBER OF PAGES:

SCOPE AND CONTENT: This thesis examines the nature and development of the British Vice Admiralty Courts in the West Indies, Bahamas and Bermuda between the end of the Seven Years' War and the end of the Napoleonic Wars, the heyday of "the First British Empire". After a general introduction and a chapter describing the origins of the Courts down to 1763, there are sections on personnel and procedures, appointments and patronage, the law applied by the Courts in their various functions, and relationships, metropolitan and colonial. A chronological treatment follows, of the American War of Independence, the inter-war period 1783-93, and the period of greatest prosperity, sophistication and reform during the French Revolutionary and Napoleonic Wars, when the Courts were strongly influenced by Sir William Scott, the great Judge of the High Court of Admiralty. The thesis is rounded off by a short summary of conclusions.
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Introduction

It is difficult for us to exaggerate the importance of the Caribbean in the minds of eighteenth and early nineteenth century European statesmen and merchants, particularly British, French and Spanish. The period when the decline of the plantations, accompanied by the importunate zeal of the Abolitionists, produced an ennui among British legislators so great that the House of Commons emptied at the very mention of the word "Jamaica" has conditioned us to a later scale of values. As late as the 1820's, the Caribbean remained the chief focus of imperial interest, and the period 1763-1815 saw changes in that region of immense general importance that have been overshadowed by later developments and events elsewhere.

Changes occurred between 1763 and 1815 which, reversing the pattern of trade and the importance of established colonies, amounted almost to a revolution. Yet the independence achieved by the Thirteen Colonies and the later importance of the United States and Canada have tended to obscure, for example, the fact that the revolt of French Hispaniola did at least as much to upset the established formulae of Atlantic trade. Besides, as has been recognised already by some

![Image](https://via.placeholder.com/150)

1Sligo-Stanley, June 22, 1824, C.O. 137/192, quoted in D.J. Murray, The West Indies and the Development of Colonial Government, Oxford, 1965, 1. For the purpose of this study, "Caribbean" is taken to include the Bahamas and Bermuda as well as the islands and lands surrounding the Caribbean Sea proper, a classification in accord with that made by the British Colonial Office in the nineteenth century.
historians, the increasing interest taken by Great Britain in the rich commercial prize of the Spanish Empire in the Caribbean region did more to modify British Mercantilism than did the secession of the American colonies. The process of imperial reform initiated by George Grenville in 1763, far from being reversed by the American secession, was reinforced after 1783. The Free Port Acts and the licence trade with the Spanish and former French colonies were far more sweeping and far-reaching than any concessions made to the independent Americans.

Studies of the American Revolution and of the events that led up to it abound; but hitherto the Caribbean between 1763 and 1815 has been skimpily treated. Not only the major events and changes, but also the details of Caribbean trade, defence and administration require a more thorough examination than has so far been given them. The absence of any treatment of the Vice Admiralty Courts in the West Indies during this period is one of the most glaring examples of this neglect. Though they were essential cogs in the machine of imperial trade and defence, they are the most neglected of all the organs of British administration. It is the purpose of this study to attempt to redress the balance; to attempt to expand our knowledge of the Caribbean by an analysis of the British Vice Admiralty Courts in that region in the period between the end of the Seven Years' War and the conclusion of the long war against Napoleonic France, relying not only on the metropolitan papers stored in London but also on hitherto untapped

and invaluable sources in the islands, most notably the papers of the Jamaican Vice Admiralty Court.

Colonial Vice Admiralty Courts fulfilled three distinct functions, with a fourth closely associated with them: as Instance, mercantilist and Prize Courts practising Roman, or Civil, Law; and as the basis for a Common Law Court of Admiralty Sessions in cases of felonies committed on the high seas. From their beginnings in the earliest days of colonisation, they were tribunals in which ordinary maritime disputes—Instance cases—were settled, and thus they provide many an insight into the day-to-day commerce of the colonies. Felonies such as murder on the high seas or piracy, came under the jurisdiction of a court that in theory—and increasingly in practice—was distinct from the Courts of Vice Admiralty; but as the Vice Admiralty Judge sat on the bench, many of the other personnel were identical and much of the procedure similar, there are many useful parallels. In 1671, colonial Vice Admiralty Courts were empowered to try infringements of the Navigation Acts; from that date, and particularly after 1763, they became judicial organs essential to the imposition of British Mercantilism. From the records of cases of Navigation Act infringement, we can judge both the popularity of the system and its effectiveness, especially in the peacetime periods, 1763-1775 and 1783-1793. Besides this, in wartime—that is, in the years 1775-1783 and 1793-1815—the Courts were, as Prize Courts, essential adjuncts of British naval power. In these years we can trace in detail from the cases before us the pattern of warfare, and estimate the effectiveness of patrols and blockades.
The volume of available data is impressive. Jamaica alone handled some 3,416 Prize cases in the two wars, as well as probably 300 Instance, Navigation and Revenue Act cases between 1763 and 1815, and this was probably no more than a third of the business of the Caribbean Courts as a whole. Yet Vice Admiralty records can tell us of much more than the bare machinery of the Courts, the volume of their business, and their spheres of operations. When to the local records are added the metropolitan records such as those in the Admiralty and High Court of Admiralty collections in the Public Record Office in London, attitudes, relationships, and the ways in which and the reasons why these changed in the period 1763-1815, begin to emerge. After a thorough examination of the available material we gain a certain sense of departmental and personal interaction: from the centre, of the Government and its Ministers with foreign governments and their ministers, with Parliament, the various Departments of State (particularly the Admiralty), with the colonial Governors, the colonists and the Courts themselves and their personnel; and, from the periphery, of the interaction of the Courts and their personnel with colonists, Governors, Navy, Admiralty and the Government itself. The real nature of the imperial system and of the way it developed can better be understood from a minute examination of the evolution and operation of such organisms as the colonial Vice Admiralty Courts, than from any number of books of colonial theory and polemic, accounts of parliamentary debate, parliamentary enactments or the biographies of imperial statesmen.

3 Between 1793 and 1795, the Courts of Antigua, Bahamas, Barbados, Bermuda, Dominica, Jamaica, Montserrat, St. Kitt's and Tortola tried 933 cases, of which 314 (or 33.6%) were tried in Jamaica. Of the 2,870 cases of which we have record for 1803-15, 937 (or 32.7%) were tried in Jamaica. H.C.A. 49/99, Prize Returns.
Considering the focal importance of the Caribbean between 1763 and 1815 and of the Vice Admiralty Courts in British administration, it is remarkable that the area during this period has been treated only fragmentarily and the Courts hardly at all. Perhaps in this historians have been infected by the extraordinary reticence of Edward Long, who in his three-volume History of Jamaica (1774) dismissed the Vice Admiralty Court in three paragraphs, despite the fact that he was for 37 years (1760-97) its Judge. The only detailed studies of the Vice Admiralty Courts relate either to the period before 1700, or to the Courts of the Thirteen Colonies, which are hardly relevant to those of the Caribbean.\footnote{Helen J. Crump wrote a definitive study of the origins of colonial Vice Admiralty jurisdiction as long ago as 1931, but this foundation has not been extensively built upon. Richard Pares's two Caribbean magna opera lean heavily on Vice Admiralty cases, but deal only with the period of the wars of 1739-63, and since his examination of the cases derives solely from appeals to the High Court of Admiralty, it is, by Pares's own admission, incomplete.}

\footnote{The chief reason may have been discretion, since for most of his tenure Long was an absentee, living the life of a dilettante in London. The increased importance of the Court after 1774 did not elicit any greater response. The MS revisions to the History of Jamaica in the Long MSS., B.M. Add. MSS. 12407-40, while voluminous, add nothing to the treatment of the Vice Admiralty Court.}

\footnote{I exclude the pamphlet by Judge Henry J. Hinchliffe, Some Rules of Practice for the Vice Admiralty Court of Jamaica (Established January 5, 1805); to which are appended A Digest and Notes, London, Butterworth, 1813, of which only the MS in the Jamaica Archives and a copy in the Library of Congress appear to exist; and the rather sketch outline by Geoffrey Yates, Introduction to the Records of Vice-Admiralty in Jamaica (1965), which awaits publication.}

\footnote{Helen J. Crump, Colonial Admiralty Jurisdiction in the Seventeenth Century, London, Longmans, for the Royal Empire Society, 1931.}
deficient. The two major Caribbean studies which span roughly the period 1763-1815 do not help us greatly: Frances Armytage's otherwise masterly treatment of the British free ports is weakened by ignoring the Vice Admiralty Courts almost altogether; and with Lowell J. Ragatz we are approaching that class of historian to whom slavery and emancipation become the over-riding concerns of the period. For some reason, Vice Admiralty Courts appear to have escaped even the wide-angle lens of Vincent T. Harlow.  

Colonial studies covering the period before 1815 are almost obsessed with America; but even in American historiography the Vice Admiralty Courts have received scant attention. Charles M. Andrews has given us the best general introduction to the colonial Vice Admiralty Courts, as of most organs of colonial administration; but his reliance on the records of the mainland colonies and of the High Court of Admiralty, and the fact that he does not go beyond 1783, provide a


9 The titles of the key studies by Andrews, Dickerson, Labaree and Manning alone are evident of this. George L. Beer strove to emphasise a new "break" at 1764, but his British Colonial Policy, 1754-1765, New York, Macmillan, 1922, merely acts as background to our period.

dangerous distortion that is magnified by the somewhat localised treatments by Hough, Towle and Ubbelohde of the Vice Admiralty Courts of New York, Rhode Island and North Carolina. The geographical location of the Thirteen Colonies and their place within the imperial economy determined that proportionately they were far more heavily involved than the West Indian Courts in Instance and Navigation Act than in Prize jurisdiction. The assumption that the secession of the Thirteen Colonies amounted to the destruction of the British Empire, coupled with the evidence provided by the experience of the mainland Courts that the whole Mercantile System was designed to benefit the plantation colonies, has led to an over-emphasis on the unpopular aspects of Vice Admiralty jurisdiction and the part that the Courts played in bringing about the American Revolution. Perhaps the most remarkable example of this one-sided approach is Carl Ubbelohde's Vice-Admiralty Courts and the American Revolution, an excellent treatment of the mainland Vice Admiralty Courts which provides a wider perspective of the economic grievances of the restless colonists before 1775, but ignores the Courts of the Caribbean absolutely.


12 Professor Andrews, from his knowledge of the mainland Courts, stated that Instance and Navigation Act cases probably comprised two-thirds of the business of colonial Vice Admiralty Courts, though, as we shall see, the proportion of this type of business in the Caribbean was scarcely a tenth; Colonial Period, IV, 236. See below, 11.

The fact that the Thirteen Colonies asserted their independence in 1776 (and thereafter evolved their own Admiralty jurisdiction) compounds the error of ignoring the Vice Admiralty Courts of the West Indies. As we shall see, it was during the period after 1776, when Prize business in wartime multiplied hugely, and the Courts in peacetime became one of the means to strengthen and make more efficient the imperial hold on the remaining colonies by the reinforcement of Mercantilism, that the Vice Admiralty Courts of the Caribbean reached their heyday.

But if our knowledge of the physical machinery of the Vice Admiralty Courts has hitherto been deficient, our ignorance of their human components has been almost absolute. By inference and extrapolation some of the historians mentioned above have made some general conclusions about the official and settler society in which the Vice Admiralty Courts were set; but it is significant that it was the historian who probably knew most about the Courts in the period who acknowledged most humbly our ignorance of certain essential aspects. "Who were the judges and how did they do their work?" asked Richard Pares in what might be the keynote to this present work. "What was their relation to the Governments, and who made the law which they administered? Who were the captors, and by what right or in what conditions did they make their captures and bring them to the courts for trial?" 15

14 See Hough, op. cit., passim.

15 Colonial Blockade, 159.
The ensuing treatment of the Caribbean Vice Admiralty Courts attempts to remedy some of the present imperfections and imbalance in their study; trying to answer the questions posed by Richard Pares while continuing the narrative beyond his chosen stop. It begins with an account of the origins of the West Indian Vice Admiralty Courts, leading up to a summary of the Courts in being in 1763. This narrative is followed, in the second chapter, by a preliminary study of the personnel and procedures of the colonial Vice Admiralty Courts while acting in their various functions, on the principle that it is impossible adequately to understand their nature and development without such a basis.

The subsequent three sections examine the working of the Caribbean Vice Admiralty Courts in greater detail. A chapter on appointments, patronage and the quality of personnel is followed by a review of the various types of law which the Courts administered and of some of the challenges which the jurisdiction they claimed had to face; and this by a detailed examination of relationships, metropolitan and colonial, in an attempt to place the West Indian Vice Admiralty Courts firmly in their context.

The sixth chapter returns to narrative, with a treatment of the part played by the Caribbean Vice Admiralty Courts in the American Revolution and the Maritime War. The subsequent chapter, while concentrating on the interval of peace between 1783 and 1793, ranges back to 1763 and forward to 1815 in looking at the problems of enforcing Mercantilism through Vice Admiralty Courts. Chapter Eight reverts to stricter narrative, with an account of the important part played by the
Courts in the long French Wars between 1793 and 1815, though the following chapter is reserved for a more detailed examination of the way in which diplomacy led to a reform both of the law and the Courts themselves in the middle of the same period.

Each chapter ends with interim findings, but the final section attempts some more ambitious overall conclusions. While not anticipating these in detail, it can be stated now that these include the contentions that the Courts were shaped by the needs of the British imperial system and were indispensable to the complete realisation of that system; but that, for a variety of reasons, both they and the system failed. Mercantilism could not work without effective Courts, and, generally speaking, the Courts were not efficient because they had insufficient uniformity, force, trained personnel, incentive or local support. Only as Prize Courts were they efficient, popular and lucrative, and only in wartime did they achieve some measure of the reform and uniformity they so sorely needed. Reform and widespread success in warfare provided a crescendo of prosperity in the period after 1803; but while the Vice Admiralty Courts flourished as agents of imperial naval power, the concurrent undermining of the principles of mercantilist purism brought about the decline of that economic system of which they were originally intended to be the agents, so that with the return of peace, a period of diminuendo and decline ensued.

Hitherto unclimbed peaks, however lowly, provide vantage points from which the general landscape may take on a different appearance.
Having examined, for the first time in detail, the Vice Admiralty Courts of the Caribbean between 1763 and 1815, and placed them firmly in their context, it may be possible to look beyond their immediate purliennis to view with fresh eyes some of the more general issues that exercise historians of the period and area. To what extent, for example, is the famous dictum true that "the most important thing in the history of an empire is the history of its mother country"? Did Britain in the Caribbean create the kind of empire she needed? What was the motive force for the steady progress towards reform and efficiency that characterised metropolitan and colonial functions alike? What was the full impact upon the Caribbean and the world at large of the American secession? Was it the result of, or did it help to bring about, a preference for trade rather than dominion and a swing to the East in the minds of British imperial thinkers? Above all, why did the plantation economy of the established colonies and the system of protective Mercantilism that gave it being and strength, decline and fail? Was it the result of these factors, of others not mentioned, or a culmination of many? In the course of the next nine chapters it may be possible to touch upon some of these problems and at the end to draw some tentative conclusions. Even if these conclusions are little more than educated guesses, they may be useful in providing suggestions for lines of further research—paths seen through the mist that may lead to other and loftier peaks.

16 The dictum is that of Richard Pares; the subsequent questions can be associated with three other great historians of the area and period, V.T. Harlow, L.J. Ragatz and Eric Williams.
Chapter One: Origins of Caribbean Vice Admiralty Courts down to 1763.

Institutions, while taking their character from their environment, tend to arise from needs; their systematisation is almost always a later refinement. In the history of the British Empire, colonies came first, extensions of the motherland shaped by local conditions but essentially founded upon private impulse; the imperial system came later, when problems arose and the worth of colonies became apparent. Similarly, the colonial Vice Admiralty Courts, while taking their forms and much of their authority from England, arose to satisfy local needs and were shaped by local conditions; only later, when their jurisdiction became confused and they were seen as entities of great potential worth in organising the Empire, were there attempts—even then always pragmatic—to incorporate them into an imperial system. By 1763 or 1770, however, this process had reached a stage when the success of the whole imperial system can begin to be gauged by the efficiency of the Vice Admiralty Courts, of which those of the Caribbean were among the most important.

Admiralty in England had always been a separate administration

It is an error of logic, founded upon evolutionary thinking, to read back a calculated policy into all institutions based upon known models. No-one is, or can be, entirely original. Colonists duplicated institutions they were familiar with to satisfy the needs they discerned; they were rarely directed to do so ab initio.
under the Crown, responsible for the Royal Navy and the protection of the coasts, the suppression of piracy and the collection of the maritime "droits", or perquisites. The legal jurisdiction of the Admiralty stemmed from the need for a tribunal to adjudicate maritime disputes and to judge felonies committed on the high seas, which were outside the competency of the common law, and later for the adjudication of prizes seized in wartime and the trial of infringements of the Navigation Acts, two matters issuing directly from the royal prerogatives to declare war and to supervise trade.

With beginnings as early as 1340, but with great advances in the fourteenth century,² the Lord High Admiral's Court became the King's chief court for matters arising "within the ebb and flow of the tide and below the first bridges on tidal rivers and creeks",³ settling disputes between mariners and merchants under the lex mercatoria,⁴ collecting the royal perquisites laid down by custom,⁵ and trying pirates, smugglers, and wartime prizes upon the ius gentium,


⁵Such as royal fish, "deodands, wrackes, drifte, flotsam, lagon, jetsam, casual finds, amercements, mulcts, penalties, forfeitures, issues and other commodities" (H.C.A. Miscellanea, 586, 56).
the provisions of treaties entered into by the King with other
monarchs and the royal law itself. A small class of specialist
Admiralty lawyers grew up among the civil law community of Doctors' Commons south of St. Paul's in London, the cases being tried in the Cockpit in the Palace of Whitehall.

As royal jurisdiction spread effectively over the whole realm and business multiplied, Lords Lieutenant of the seaboard counties from 1536 on were created Vice Admirals in their Commissions, given the power to appoint Judges and other court officials, to institute both commissions of inquiry and trials and to be responsible for the collection of royal dues, the suppression of piracy and smuggling and the trying of maritime disputes. It is fairly certain that the English Vice Admiralty Courts only tried ordinary maritime disputes, settling questions of royal perquisites by legal inquiries and merely arraigning felons such as pirates to be tried elsewhere by common law process, and smugglers to be sent for trial in the High Court of Admiralty or the Exchequer Court. Questions strictly of prize were always reserved.


7 That is, after 28 Hen. VIII, c.15. The county Vice Admiralty Courts may have been in existence rather earlier, since the Act refers to appeals procedure, and the Letters of Marque Bonds in the H.C.A. papers mention county commissioners and rules for Vice Admiralty Courts dating from the period of the Duke of Richmond's Admiralty (1525-36).

8 Normally, by specially commissioned Courts of Oyer and Terminer.

for the High Court of Admiralty, acting under special commission during wartime. Profits of Vice Admiralty jurisdiction were sometimes large but they were extremely sporadic, and although in all some 19 Vice Admiralty Courts have been traced in England and Ireland, they never flourished.

During the seventeenth century Admiralty Courts, like all the prerogative courts employing Roman or civil law and not employing juries, came under attack and constraint from the common lawyers. Perhaps the effect of this attack has been exaggerated by the violence of the arguments on either side, but it did lead to a stricter delimitation of Admiralty jurisdiction and was followed by a practical submergence of the English Vice Admiralty Courts. Jurisdiction in maritime cases was limited by stricter definitions, and criminal cases

10 Though Letters of Marque for privateers were apparently issued by Vice-Admirals as well as the Lord High Admiral. H.C.A. Letters of Marque Bonds, passim.

11 Francis Basset, Vice Admiral of North Cornwall, declared an income of £486 for 1624, of which expenses amounted to £163.9.4 and the Lord High Admiral's share, £161.5.4 H.C.A. Misc., 158. Fees in Vice Admiralty Courts were fixed in 1635, Judges giving bonds on taking office. Ibid., 409, 586.

12 C.M. Andrews, Colonial Period, IV, 223. This includes the Vice-Admiralty Court of the Cinque Ports, probably the most important of all.


were restricted to trials with juries held under special commissions of Oyer and Terminer. Navigation Act and other revenue cases, which increased hugely in number during the seventeenth century, were shared not only with the Court of Exchequer, but with every "court of record". Only in prize cases and in appeals from the remaining and new Vice Admiralty Courts did the High Court of Admiralty retain a monopoly, for a time.

Helen J. Crump has traced the origins of English overseas Vice Admiralties to 1583 and to the first English colony, Newfoundland. There the need for an Admiralty jurisdiction was obvious, for it was a maritime community that hardly existed on land at all. The needs of the first English adventurers in the Caribbean were rather different and wider. Endemic and largely unofficial warfare against the Spanish produced prizes that required some form of adjudication. Privateers required Letters of Marque and, the borderline between privateering and piracy being often overstepped, some form for the trial of pirates

15See below, 30.

16Colonial Admiralty Jurisdiction, op.cit. (1931). We rely heavily on this work in the early part of this chapter, despite Crump's tendency to believe that colonies and Vice Admiralty Courts were implanted by conscious policy, her preoccupation with piracy as a formative factor, and her failure to distinguish clearly between the four distinct functions of Admiralty jurisdiction. Some fresh insights into Miss Crump's material—as well as additions to it—are to be found in A.P. Thornton, West India Policy under the Restoration, Oxford, 1956.

17On the principle of "no peace beyond the line" (the Tropic of Cancer) which, while abrogated in the Treaty of Madrid in 1630, continued unabated until the Treaty of 1670.
was essential if the infant colonies were to obtain stability. Maritime disputes abounded, and with them a need for local arbitration. Most numerous were disputes over the division of the spoil of wrecks, the most lucrative of the proceeds of the rocks and shoals which constituted the Bermudas and Bahamas; but as legitimate trade gained momentum, so the number of disputes over charter-party and bottomry and seamen's wages increased. Governors were always interested in a share of the profits of adjudication, and stretched the wording of their Commissions to the utmost in asserting their rights. They insisted on shares, as Admirals in the proceeds of Prize, and as direct representatives of the Crown in the outcome of wrecks and other royal perquisites, and even presumed to sit as Judges in all cases to boost their meagre incomes with judicial fees. At first, the home government was happy to use Admiralty Commissions simply as inducements to companies, proprietors and Governors. It was not until the turn of the seventeenth and eighteenth century that the government began to insist upon formal Vice Admiralty Courts, to enforce the Droits of Admiralty and the Acts of Trade, as well as to aid in the defence of the by now invaluable sugar empire of the Caribbean.

The earliest venturers to the Newfoundland Banks appointed one of their number Admiral or arbiter, and as early as 1583 Sir Humphrey Gilbert was named Admiral among his other titles to that inhospitable land.\textsuperscript{18} The first specific grant of Admiralty jurisdiction dates from 1615, when Sir Richard Whitbourne was given the right to establish

\textsuperscript{18}David B. Quinn (ed.) \textit{The Voyages and Colonising Enterprises of Sir Humphrey Gilbert}, 2 vols., London, 1940, 1.
commissions of inquiry and collect royal dues on the coast. He was not empowered, however, to set up a court as such, and got into trouble when he attempted to levy fines upon the fishermen for non-attendance and contempt.19

The early settlers in "Virginia" appointed Admirals,20 but their chief duties were the organisation of convoys and the protection of the coasts and they appear to have enjoyed little legal authority.21 The early charters specified the right to legal jurisdiction over sea as well as land,22 but since they were not ratified by grants from the Admiralty, it was presumed that maritime cases should properly be carried to England.23 Nevertheless, very few cases were worth the trouble of a transatlantic voyage, and a large volume of maritime litigation was carried on in the existing courts. This was particularly true of the common law courts of Massachusetts, always the most independent of colonies,24 and in Maryland, where the Lords Baltimore appear to have extended

19 R. Whitbourne, Discourse and Discovery of Newfoundland, London, 1622.
20 For example, Captain John Smith and Sir Samuel Argall, who came into serious conflict over their respective claims as Admirals. See C.M. Andrews, Colonial Period, I.
21 Save in the collection of royal dues and the Admirals' Tenths. Ibid.
22 Crump, op.cit., 59.
23 For example, the grant of Maine to Sir Ferdinando Gorges in 1640 specifically excluded Admiralty jurisdiction, though both Gorges and Captain John Mason at different times received authority as Admirals. See J.P. Baxter, Sir Ferdinando and his Province of Maine, 3 vols., Boston, 1890, II, 126-9, 139; Crump, op.cit., 25-35.
24 Ibid., 37-55.
their proprietary rights energetically into Admiralty jurisdiction. 25

Bermuda, a seafaring community athwart the normal sailing route from both Virginia and the Caribbean to Europe, 26 being a corporate colony longer than any other, 27 exercised a maritime jurisdiction that was as independent of metropolitan control as any during the seventeenth century. The grant to the Somers Islands' Company in 1615 included jurisdiction by land and sea, and the Governor's Council took upon itself the arbitration of many maritime cases, especially of wreck, 28 in which it claimed a jurisdiction extending as far as the Bahamas. 29 The competence of this court

25A bill for a Maryland Vice Admiralty Court initiated by Lord Baltimore passed the legislature as early as 1638 (Archives of Maryland, Proceedings of Provincial Court, 1658-62, 302-3; Acts of the General Assembly, 1637-1664, 46-7); but apparently this Court never came into operation, and maritime cases were usually tried in the Provincial Courts. Crump, op.cit., 61-2. The chief motives of Proprietors was always to assert their "Admirals' Tenths". This applied also to the Carolinas and the Bahamas after 1663, though in neither place was a Vice Admiralty Court certainly erected before 1697. Thomas Walker claimed in the Bahamas in 1718 to have been Vice Admiralty Judge for the Proprietors, but this, even if true, probably does not apply to the period before 1697. Michael Craton, History of the Bahamas, London, Collins, 1962, 96.

26For an excellent description of Bermuda down to 1763, see Henry C. Wilkinson, The Adventurers of Bermuda, Oxford, 1933 and 1958; Bermuda in the Old Empire, Oxford, 1950.

271615-1684; longer, strictly, even than Massachusetts (1620-1685).

28But also over whales and other royal perquisites, and ordinary maritime disputes. Crump, op.cit., 82-7; Wilkinson, op.cit., 1, passim.

29Not settled until 1648, and practically under the control of Bermuda until 1670. The 1657 Abaco wreck was the cause célèbre. Craton, op.cit., 62.
began to be challenged over the disposal of Spanish wrecks,\textsuperscript{30} and over the issue of Letters of Marque and adjudication of prizes during the Dutch Wars.\textsuperscript{31} Perhaps as a result of this, a special mercantile "Court of Pipepowder",\textsuperscript{32} distinct from the Council\textsuperscript{33} and yet owing nothing to the Admiralty in England, first met at St. George's in May, 1668,\textsuperscript{34} and from then on a stricter observance of the precepts of international law was followed.\textsuperscript{35} In 1679, however, the Governor was forced to admit in reply to a questionnaire sent out in 1676 by the Committee for Trade and Plantations that Bermuda had no formal Admiralty Court, and that "on occasion the Governor and Council determine Maritime Causes",\textsuperscript{36} so that after the Somers Islands' Company was dissolved in 1684, the first royal Governor was ordered "to erect one or more Court or Courts Admiral within our said Islands and

\textsuperscript{30}In 1621, 1642 and 1649 particularly. Crump, \textit{op.cit.}, 84-5; Wilkinson, \textit{op.cit.}, I, 144, 260, 269, 274.

\textsuperscript{31}Particularly over the adjudication of 67 Dutch negroes from Tortola in 1666. Crump, \textit{op.cit.}, 88; Wilkinson, \textit{op.cit.}, I, 333, 342.

\textsuperscript{32}That is, "Pipepowder"--a type of court dealing with cases in \textit{rem} as well as in \textit{persona} that originated at fairs in the sixteenth century.

\textsuperscript{33}Technically. In fact, it consisted of the Governor, Secretary and five Councillors as well as the Sheriff and thirteen jurors.


\textsuperscript{35}Lawyers, for example, began consistently to refer to Malynes' \textit{Lex Mercatoria} (1622). \textit{Ibid.}, 332-3.

\textsuperscript{36}\textit{Ibid.}, 429.
Territories for the Hearing and Determining of all Marine and other Causes and matters proper therein to be heard with all reasonable and necessary powers, Authoritys, Fees and Privileges."

The first faint stirrings of Admiralty jurisdiction in Barbados and the Leeward Islands, the plantation colonies at the windward entrances to the Caribbean, are lost in the myths that substitute for records in their early history. Presumably, early maritime disputes were tried in the existing courts as in other colonies. As the only formal English colonies in the Caribbean proper down to 1655, while that sea already swarmed with English "privateers", they must have been the focus of jurisdiction when adjudication was called for, though their location to windward was a drawback and the fact that some Barbados cases were carried to Bermuda and Massachusetts in the 1640's and Jamaica in the later 1650's may indicate that

37 Ibid., 531.

38 For example, the legend that the first English settlement in Barbados occurred in 1605, not 1625. For modern treatments of the early history of Barbados and the Leewards, see Vincent T. Harlow, A History of Barbados, 1625-1688, Oxford, 1926; Charles S.S. Higham, The Development of the Leeward Islands under the Restoration, 1660-1688: A Study in the Foundation of the Old Colonial System, Cambridge, 1921; James A. Williamson, The Caribbee Islands under the Proprietary Patents, Oxford, 1926.

39 A full system of common law courts was in existence in the islands almost from the beginning, though with lamentable standards of jurisprudence. Governor Russell of Barbados in 1695, for example, claimed that only one of the innumerable Barbados Judges had any legal training whatsoever. Calendar of State Papers, Colonial, America and West Indies, 1693-6, 1930.

40 No-one knows, for example, whether the Spanish prizes seized by the corsairs of Old Providence and Tortuga (1630-50) ever came to a court, or whether they were disposed of in the piratical manner alleged by the Spanish.

maritime jurisdiction was even fainter in the "Caribbees" than elsewhere.\textsuperscript{42}

The Council of Barbados was certainly jealous of invasions by the jurisdiction asserted by the Parliamentarians between 1653 and 1656.\textsuperscript{43} Sir George Ayscue, when subduing Barbados in 1651 seized several Dutch ships for infringing the Navigation Act of that year,\textsuperscript{44} and the expedition of Penn and Venables in 1655 arrested more Dutch vessels and added many Spanish prizes taken off Santo Domingo.\textsuperscript{45} The expedition's Commissioners set up a Prize Office and claimed the right "to take Informations, and to Implead all Persons before ourselves for what shall be Owinge his highnes, and for such debts as become dew to any Forrainers;--by reason of any good or Comodityes brought hither Contrary to ye Lawes of England."\textsuperscript{46} They were expected simply to make inquiries and to send back seized vessels and documents to the High Court of Admiralty for trial; but this was obviously impractical, and the four Prize Commissioners left behind in Barbados desired the

\textsuperscript{42} It did, however, exist. Winslow, one of the 1655 Commissioners, complained that a local common law court had acquitted a vessel arraigned for a breach of the 1651 Act. Thomas Bird (ed.) A Collection of the State Papers of John Thurloe Esq., Secretary... , 7 vols., London, 1742, 111, 249.

\textsuperscript{43} Natural in Royalists who had interests in resisting the implementation of the 1651 Navigation Act.

\textsuperscript{44} Crump, \textit{op.cit.}, 94.

\textsuperscript{45} C.H. Firth (ed.) Narrative of General Venables, London, Camden Society, n.s. IX, 1900, 10, 51.

\textsuperscript{46} Letter of Sir Thomas Modyford to Commissioners of the Admiralty, August 9, 1655, B.M. Add.MSS 18986, 205.
power to adjudicate on the spot, to sell and to apportion prize money. Their authority to do this was hotly challenged by the Barbados Council, however, as Thomas Modyford, one of the Commissioners, explained in a letter of petition to the Admiralty in August, 1655.\(^{47}\)

Apparently, nothing was changed before the Restoration, but when Lord Willoughby was made Proprietor of Barbados and the Leewards in 1662, he was called High Admiral and granted the power to erect Admiralty Courts.\(^{48}\) In 1671, Sir Charles Wheeler, the first royal Governor of the Leewards, was instructed to act as Vice Admiral under the supervision of the Lord High Admiral,\(^{49}\) and in 1677, the Admiralty jurisdiction of the Leewards was formally separated from that of Barbados in the patent to Sir William Stapleton.\(^{50}\) From that date on, there were therefore distinct Vice Admiralty Courts for Barbados and the Leewards, the seat of which became Antigua, with subordinate courts in several other islands.\(^{51}\)

Since Jamaica was the first English colony established by state enterprise and, being fertile and strategically placed in the centre of the Caribbean astride the Windward Passage and to the leeward of the Lesser Antilles, quickly asserted itself as the most prosperous

\(^{47}\text{Ibid.}\)

\(^{48}\)Apparently, the original grant of 1662 did not specify this, but the second patent of 1663 did. Both are now lost, but these matters were referred to in the grant to Willoughby's son in 1666. CSPC AWI, 1661-5, 1615; Crump, \textit{op.cit.}, 118-9, n.1. Mention of a Vice-Admiralty Judge, Edwin Stede, was made in Barbados as early as 1663. C.O. 1/52, 46.

\(^{49}\)\textit{James, Duke of York}. CSPC AWI, 1669-74, 298, 507.

\(^{50}\)Adm. 2/1755, 34.

\(^{51}\)See below, 44, n.
and active of all English colonies, it is not surprising that the origins of Vice Admiralty Courts there are better documented than anywhere else. None the less, early Jamaican Admiralty jurisdiction developed in a remarkably independent fashion. Once Jamaica had been captured, the conquerors had an excellent chance to establish the type of administration they needed, unhampered by such vested interests as the Council of Barbados or even the Admiralty and Privy Council at home. Governor Edward Doyley (1655-62), who had the advantage of having been trained at the Inns of Court, appears to have acted "unconstitutionally" in issuing Letters of Marque, commissioning special Vice Admiralty Courts under the Great Seal of the colony and allowing prizes to be condemned and sold locally, and he often presided personally on commissions to settle ordinary maritime disputes. According to his own record, however, he often hesitated to overstep his authority in the matter of Prize. He continued to appoint a Prize Officer, whose duty was to take custody of seized vessels and to send records to England. On one

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52 For the best account of the earliest years in Jamaica, see S.A.G. Taylor, The Western Design: An Account of Cromwell's Expedition to the Caribbean, Kingston, Institute of Jamaica, 1965.

53 Actually Governor with two fellow Commissioners, November, 1655-December, 1656 and then alone from September, 1657 until superceded by Lord Windsor after the Restoration.

54 The adverb is Helen Crump's, op.cit., 98.

55 Journal of Colonel Edward Doyley, B.M. Add. MSS 12423, from which the main details of this paragraph are taken.

56 Captain Povey, appointed first in 1655 and again, by Doyley alone, in 1659.

57 And presumably the prizes themselves; and, if not, records of sales and condemnations at least.
occasion he refused to act because he was the only one of three Commissioners remaining alive, and in 1658, when Captain Myngs brought in a large number of Dutch "prizes", he refused to condemn them without clearer authority from the Admiralty.\(^5^8\)

At the Restoration, this authority was more readily available, and by 1662 a remarkably sophisticated Vice Admiralty Court was in operation in Jamaica. This Court, evidence for which exists in the unique Precedent Book discovered among the High Court of Admiralty papers,\(^5^9\) sat either at Cagway (Port Royal) or Saint Jago la Vega (Spanish Town). Its officers, procedures, and fees were based largely on those of the High Court of Admiralty,\(^6^0\) probably because the first Judge was a Doctor of Civil Law, William Michell.

The cases for the two years which the Precedent Book covers were almost equally divided between Prize and ordinary maritime disputes.\(^6^1\)

The establishment of the Jamaican Vice Admiralty Court was largely due to the work of Governor Doyley and it gained its

\(^5^8\) Maybe because these were Dutch vessels and presumably seizures for infringements of the Act of 1651, not true prizes. Myng's prizes from Santiago de Cuba in 1662 were certainly condemned in Jamaica. Confusion occurs because Navigation Act seizures were commonly referred to as prizes as late as 1720.


\(^6^0\) Down to the writing of the Final Decree of condemnation for the Santiago prizes in Latin, a course not followed long thereafter in the colonies, though all case papers in the High Court of Admiralty were in Latin until about 1734.

\(^6^1\) Crump, \textit{op.cit.}, 109. The sale of the Santiago prizes realised £729.7.6, of which the Lieutenant-Governor Sir Charles Lyttleton received £72.18.6 as his Admiral's Tenth. The King's share came to £305.4.6, a rather odd proportion of the total.
first real authorisation during the short term of his successor, Lord Windsor; but it was under Jamaica's third Governor, Sir Thomas Modyford (1663-71) that Vice Admiralty jurisdiction achieved unparalleled vigour and competence. Modyford, who had been a planter and Prize Commissioner in Barbados, received extensive privileges in his patent from the Admiralty in 1663. He was declared the commander-in-chief of Royal Navy vessels at Jamaica except when there was an Admiral on station, authorised to issue Letters of Marque, to collect the Droits of Admiralty, and to fill vacancies in the offices of Judge, Register, Marshal and Advocate of the Vice Admiralty Court. With the help of his brother, whom he appointed Vice Admiralty Judge, Sir Thomas Modyford carried out practically a "private war" against the Spaniards. From his time on, Jamaican Governors came to wield great authority through the Vice Admiralty Court. Governors or their Lieutenants often acted as Judges, and Sir Thomas Lynch in 1683

62 Windsor even styled himself Vice Admirallus in mari Americano, but this was probably an empty boast. H.C.A., Vice Admiralty Proceedings, 59, 8. Windsor's Instructions of March 21, 1662, are in C.O. 324/1, 37-56 and C.O. 138/1, 13-19.

63 Adm. 2/1755, 5.

64 Sir James Modyford, who appears to have vacated the bench at the time of his brother's dismissal in 1671.

65 Taylor, op.cit., 222.

66 Even if, as in the case of Sir Henry Morgan in 1670, it was faute de mieux. L.A. Harper, The English Navigation Laws, New York, 1939, 183. Lyttleton acted while Windsor's Lieutenant (1662) and Lord Vaughan sat in person (1675). Crump, op.cit., 110. The explanation of the large turnover of Judges in the early years may lie in Edward Long's statement that before 1721 (when the first Judge was specifically commissioned by the Admiralty) the Judgeship was held by a Commission of two, presumably under the Great Seal of the colony.
even referred to himself as Governor and Judge Admiral.67 Governors also, on the strength of their Commissions, claimed the right to judge by martial law, at least until the time of Governor Lynch, who won an acrimonious dispute with the Admiralty over this matter in 1683.68

For a dozen years after its acquisition by the English Jamaica was the flourishing centre of privateering activity that was very loosely controlled from England; but after the treaty with Spain in 1670, Prize cases practically disappeared for two decades. The authorities in England were now concerned to enforce the obligations entered into by the 1670 treaty (to which the treaty with France was added in 1686) and to bring to trial those seaborne ruffians who, deprived of the cloak of legality called privateering, had turned to outright piracy. Naturally, this involved a curbing, or at least delimitation, of the Admiralty powers enjoyed by colonial Governors; but the period saw a gradual extension of imperial authority in every field, largely through the impetus derived from James, Duke of York, who became James II in 1685.

During the Civil Wars, the Duke of York had acted as Lord High Admiral and authorised an Admiralty Prize Court in Brittany,69 and at the Restoration his two patents gave him Admiralty authority over "Dunkirk, New England, Jamaica, Virginia, Barbadoes, St. Christopher's, Bermuda,


68 Ibid., 792, 793, 1065, 1482, 1483, 1484, 1563, 1578, 2055.

69 The evidence is included in the Jamaica Precedent Book, H.C.A. Vice Admiralty Proceedings, 59.
Antigua in America, Guinea, Binny and Angola in Africa, and Tangiers in the Kingdom of Fez" as well as "England, Wales, Ireland, Normandy, Calais and Acquitaine". When he was deprived of his English offices by the Test Act in 1673, he retained his authority over Ireland and the colonies and continued to be the dominant force in the embryonic Committee of the Privy Council for Trade and Plantations.

In 1671, Sir Thomas Modyford was recalled from Jamaica in disgrace, though his unruly Lieutenant Sir Henry Morgan remained, presiding among his other duties as Judge of the Vice Admiralty Court. Morgan was involved in a heated dispute with Governor Lord Vaughan over the arbitrary acquittal of a buccaneer called Silas Deane in 1675, out of which came an opinion by the Judge of the High Court of Admiralty that henceforward every piracy trial in the colonies ought to be held by special commissions of Oyer and Terminer by the Act of 28 Henry VIII. Standing Commissions were thereupon issued to colonial Governors, though these were discontinued in 1684 on the grounds that the Henrician statute did not extend to the colonies and therefore the Vice Admirals' powers did not include the right to try capital crimes. Special

70 The first quoted is the 1663 patent (Rot. Pat. 14 Car. 11, pt. 12, no. 6). The 1662 patent had only included the British Isles and "the dominions beyond the seas" (Rot. Pat. 12 Car. 11, pt. 17, no. 22).

71 It has even been argued that his action in retaining Admiralty jurisdiction over Ireland and the colonies prevented the total merging of the home and colonial Admiralty jurisdictions. Crump, op.cit., 103.

72 C.S.P.C. A.W.I., 1675-6, 912, 193, 196, 976, 993, 994, 1001, 1093.

73 Ibid., 1681-5, 1578.
commissions were occasionally sent out to colonial Governors after this,\textsuperscript{74} but it was not until the Piracy Act of 1721\textsuperscript{75} that the jurisdictional muddle was cleared up and a uniform procedure for trial of pirates in the colonies under the control of the Admiralty was set up.

During the 1670s and 1680s, the Committee for Trade and Plantations sent out general inquiries into the claimed extent of Admiralty jurisdiction,\textsuperscript{76} and the Admiralty, in drawing up Governors' Vice Admiralty Commissions, became more stringent in their limitations. When war broke out again in 1689, the procedures for issuing Letters of Marque and prosecuting cases of Prize were much more formally outlined than ever before,\textsuperscript{77} though it was not until 1708 that a comprehensive Prize Act was passed and promulgated in the colonies.\textsuperscript{78}

But it was not chiefly by the control of piracy and Prize jurisdiction that the imperial bonds were tightened, but by the extension of a Mercantile System through the Acts of Trade, and in

\textsuperscript{74}During his second and third terms as Governor, Sir Thomas Lynch sent descriptions of Vice Admiralty jurisdiction back to England, in 1671 and 1683. C.S.P.C. A.W.I., 1668-74, 604; 1681-5, 1164, 1260. Strangely enough, in his 1671 report Lynch wrote that the Jamaican Vice Admiralty Court was inactive and that in his opinion the common law courts could do the bulk of the maritime work; but this was just after prize business went into eclipse after the Treaty of 1670 and the subsequent departure of the Modyford brothers.

\textsuperscript{75}For example, Woodes Rogers carried one with him when he went to the Bahamas in 1718. Craton, \textit{op.cit.}, 104. Standing Commissions were sent out to some colonies by 11-12 William III, c.7.

\textsuperscript{76}Geo. I. Special Commissions for the trial of pirates were thereafter issued in the Bahamas, 1728 and 1762, Barbados, 1728, 1762 and 1802, Bermuda, 1728 and 1762, Dominica, 1772, Grenada, 1772, Jamaica, 1728, 1762, Leewards, 1728, 1762.

\textsuperscript{77}That is, not arbitrarily or even by Commission under the colonial Great Seal, but through a court specifically commissioned by the Admiralty.

\textsuperscript{78}See below, page 42.
this process, the colonial Vice-Admiralty Courts were eventually to play a major role. The Navigation Acts of 1651 and 1660 stipulated that infringements should be prosecuted "in any Court of Record" but from the beginning the advantages of civil law courts—particularly Admiralty Courts—over the courts of common law, were obvious. Civil law courts could recognise prosecutions against things as well as persons, could take evidence in written depositions, and were not burdened by the requirement of juries. In England, Navigation Act prosecutions were usually in the Exchequer Courts, particularly since there was considerable doubt as to whether Admiralty Courts—keeping minutes but not engrossing all case papers on parchment—constituted Courts of Record.

In the colonies, there were no properly constituted Courts of Exchequer, though in Barbados, Jamaica, and Bermuda there were sporadic attempts by the Governors to assert that they and their Councils performed the functions of Exchequer Courts when sitting in judgement on revenue cases. The attractions of this jurisdiction, as well as the objections

12 Car. II, c. 18.

That is, in rem as well as in personam. See below, II.

That is, not all verbatim.

As revenue cases had always been.


W.T. Harlow, Barbados showed how the Governor of Barbados claimed Exchequer jurisdiction in the disputes with the Walronds (1663) and the many disputes with the Assembly over the 4 1/2% Duty. Op. cit., 148, 154, 202, 336. Harlow cited Clarendon MSS Bodleian 80,283 and Sloane MSS 2441, 21 for the development of the local Exchequer Court. See also CSPC AWI, 1681-5, 357, 463. For the Leewards, see C.O. 153/3, 221, 315-6, 330-1, and CSPC AWI, 1685-8, 1620, 1706, 1773; L.A. Harper, op. cit., 184. For Bermuda, see Wilkinson, Old Empire, 299.
made to it, are obvious when it is remembered that by the Act of 1660, one-third of all proceeds of condemnations could go to the Governor. Generally, the claim of the Governor to be the chief Baron of the Exchequer in the colony convinced no-one, and local pressures demanded that if Navigation Act cases were to be tried at all, they should be prosecuted in the courts of common law. Among their deficiencies, however, the local common law courts suffered from a reluctance of their jurors to convict illegal traders, who were often among their own number. "Lett them committ whatsoever they will," wrote one commentator from Bermuda in 1701, "they'll not punish one another", and Larkin, the first Judge of the Vice Admiralty Court in Bermuda, went so far as to claim that he "would not try a cockroach by a Bermuda jury." Harper managed to trace 46 cases of jury trials of

85 In one Barbados case, the Governor had a case presented before him as an Exchequer Judge, but also prosecuted the same in a common law court just to be sure. L.A. Harper, op.cit., 185.

86 Bryan Edwards (1793) went so far as to claim that in Jamaica the Exchequer Court was, with the common law courts, part of the combined judiciary, and thus out of the sphere of influence of the Governor-in-Council. The History, Civil and Commercial, of the British Colonies in the West Indies, 2 vols., London 1793.

87 Not that all Governors and Councillors were blameless. There were innumerable cases in the Leewards, for example, of these gentlemen failing to prosecute because they were interested parties, or otherwise "under the influence" of the local traders. See below, VII.

88 C.O. 37/2, 99 in Wilkinson, Old Empire, 299.

89 Ibid.
Navigation Act infringements before 1775, nine of them West Indian, of which barely more than half (25) resulted in convictions;\(^9^0\) but these figures understate the problems of enforcing the Acts of Trade. The use of paid informers authorised in the 1651 Act;\(^9^1\) the appointment of Naval Officers by Governors after 1660\(^9^2\) and the granting of a half-share of seizures made by them to ships of the Royal Navy\(^9^3\) made necessary a Court that was unswayed by local popularity. Likewise, the imposition of the equally unpopular plantation duties, registration requirements and a system of bonds\(^9^4\) required officials who were not only dedicated\(^9^5\) but also experts in maritime matters. It is significant that the first appointment of supervisory officers for North America by the Commissioners of the Customs\(^9^6\) was contemporary with the Act that specified for the first time that Navigation Act infringements could be prosecuted in colonial

\(^9^0\) Harper, *op.cit.*, 175.

\(^9^1\) They were to receive one-third of the value of condemnations which they had prosecuted by Qui Tam process. C.H. Firth (ed.) *Acts and Ordinances of the Interregnum, 1642–1660*, London, 1911, II, 559.

\(^9^2\) Authorised by 12 Car. II c.18, but not implemented immediately. The first mention of a Naval Officer in Jamaica, for example, was in 1676.

\(^9^3\) By the Order-in-Council of June 1, 1663. Naval vessels had been specifically ordered to seize vessels infringing the Acts as Trade as early as 1651.

\(^9^4\) By the Act of Frauds in 1673, 25 Car. II.

\(^9^5\) Disinterested would have been better, but Customs officials and Vice Admiralty officers alike depended upon seizures and condemnations for their emoluments.

\(^9^6\) By 25 Car. II, c.7.
Vice Admirals' Courts. 97

But the colonial Customs officers, of whom Edward Randolph was the most active and long-suffering, 98 faced tremendous local opposition to their attempts to prosecute seizures in the Vice Admiralty Courts. Colonists obstructed the Customs officers wherever they could, 99 and their beloved common law courts also challenged the jurisdiction of the Admiralty Courts while extending their own over offshore waters, 100 to cases that properly occurred on the high seas 101 and even to those that originated overseas. 102 What was needed was a much

97 By 22-23 Car. II, c. trials for failures to conform to the Act of 1660 were to be held "in the court of the High Admiral of England, or of any of his vice-Admirals, or in any court of record in England". House of Lords MSS n.s. II, 233.

98 1632-1703. Was a royal agent in Massachusetts as early as 1675. Surveyor-General over North America, including the Bahamas and Bermuda 1691-1703. Did not visit the Caribbean proper, though he was in Bermuda 1699-1700.

99 Edward Randolph, for example received pitiful treatment and found himself in prison on at least two occasions, in Massachusetts (1688-9), and in Bermuda (1699-1700).

100 For example, the case of the St. George in Jamaica (1675-6), in which the Vice Admiralty Court had given up jurisdiction to the parochial court of St. Dorothy despite the fact that the vessel had been seized 3/4 mile off the shore at Old Harbour, on the grounds that this was "within the keys". On appeal, this definition was quashed by Judge Lloyd of the High Court of Admiralty. P.C. 2/65, 99-100; C.S.P.C. A.W.I., 1675-6, 958, 972, 976, 987. Harper cites a similar case for Barbados, from C.O. 28/2, 102, i-iii; C.S.P.C. A.W.I., 1693-6. Op.cit., 185.

101 See case of James, C.S.P.C. A.W.I., 1669-74, 567. For criminal jurisdiction, see below, II.

102 In the Leewards case of the Betty (1686), the common law courts challenged the jurisdiction of the Vice Admiralty Court over 60 negroes condemned therein, though the case originated on the shores of Africa, on the grounds that the negroes were seized on land. C.O. 153/3, 336-7; C.S.P.C. A.W.I., 1685-8, 1773.
more formal system of Vice Admiralty Courts, exercising a law of much
greater precision. These requirements were largely fulfilled by
legislation passed in 1696 and 1697.

Edward Randolph returned to England in 1695, arguing in person
before the Privy Council the string of complaints and suggestions with
which he had been bombarding them for close on twenty years. In 1696 was
passed a comprehensive Navigation Act,103 ironing out most of the
wrinkles in the existing legislation and stating that prosecutions
should be made solely "in any of his Majesty's Courts at Westminster,
or in the Kingdom of Ireland, or in the Court of Admiralty held in his
Majesty's plantations. . . .",104 thus giving the colonial Vice
Admiralty Courts— in the Crown Colonies at least— exclusive jurisdiction
over infringements of the Acts of Trade. In 1697, before the provisions
of the 1696 Act came into force, Vice Admiralty Courts were officially
created. The Privy Council ordered the High Court of Admiralty to
draw up plans for new courts and to prepare, under Warrants from the
Commissioners of the Admiralty, commissions for colonial Governors
to set them up, appointing Judges, Registers, Marshals, and Advocates
to staff them.105 Following the suggestions of Edward Randolph, commissions

1037-8 Will. III, c.22.

104 Section Seven, ibid.

105 Andrews, Colonial Period, IV, 226.
were sent out within a year to authorise eleven Vice Admiralty
districts in the colonies, corresponding very largely to the districts
presided over by the senior Customs officers. In the Caribbean area,
jurisdictions were authorised where already established; in Bermuda,
Barbados, the Leewards Islands, and Jamaica.\textsuperscript{106} A Vice Admiralty
Court was authorised for the Bahamas, but, like the Carolina Court, it
was to come under the general supervision of the Governor of Virginia.\textsuperscript{107}
Also in 1697, the newly constituted Board of Trade sent out to all Governors
elaborate new Standing Instructions,\textsuperscript{108} and the Commissioners of the Customs
a set of copies of all the Navigation Acts, requesting co-operation in
their enforcement.\textsuperscript{109} This practice was continued regularly,\textsuperscript{110} and
by 1753 colonial Governors, now bonded to enforce the Navigation Acts,

\textsuperscript{106} The warrants are in H.C.A. Misc. 823, Secretary of Admiralty's
Precedent Book; C.S.P.C. A.W.I. has inquiries to Governors about their
Vice Admiralty jurisdictions, dated November 19 and 21, 1696, also in
Adm. 1/5146, dated December 2, 1696. An answer to a query about the
jurisdiction in proprietary colonies from the Attorney-General is in
C.S.P.C. A.W.I., dated December 4, 1696. The Commissions are in Adm.
2/1047, dated April 28, 1697.

\textsuperscript{107} This was not accidental. As a result of the Attorney-General's
opinion, Vice Admiralty Courts in proprietary colonies were placed under
the control of Governors in nearby Crown Colonies. The Governor of
Massachusetts was responsible for Rhode Island and New Hampshire; of
New York, for Connecticut and East Jersey; and of Maryland, for
Pennsylvania and West Jersey.

\textsuperscript{108} House of Lords MSS n.s. 11, 472-81; 494-8, March 8, 1697.

\textsuperscript{109} Ibid., 483-8, April 12, 1697; Treasury 27/16, 79.

\textsuperscript{110} Andrews, Colonial Period IV, 176; Leonard W. Labaree, Royal
Instructions to Colonial Governors, New York, 1935, 1035-76 has the Instructions
relating to the Acts of Trade.
were provided with a sheaf of no less than 92 to digest. 111

The reforms of 1696-7 had created a colonial Vice Admiralty
machine, but problems remained before it could work efficiently.
The wording of the 1696 Act, like many of the Navigation Acts,
provided loopholes for interests to challenge the jurisdiction of
the Vice Admiralty Courts, 112 which was now theoretically wider than
that of the High Court of Admiralty itself. 113 One reasonable doubt
was as to whether the jurisdiction accorded to the Vice Admiralty
Courts by the 1696 Act applied only to the provisions of that Act
or to the whole mercantile system. In 1676, Judge Lloyd had decreed
that Admiralty statutes only applied to the colonies if they
specifically were stated to do so. 114 The 1696 Act was an attempt to
draw together all Navigation Acts into a comprehensive web of
legislation, but it was not until 1726 that Judge Penrice decreed
that the Vice Admiralty Courts in the colonies were competent to
try cases under all the Acts of Trade. 115

111 Andrews, Colonial Period IV, 116, n.3. The form of the bond for
Governors, first drawn up for royal Governors in 1697, was not issued to all
Governors until 1722.


113 "...the Vice Admiralty Courts in the colonies had marine and
prize causes in common with the High Court of Admiralty, marine causes in
common with the English Vice Admiralty Courts; and in addition a further
jurisdiction that neither of the others ever exercised, over breaches
S. Towle, Vice Admiralty of Rhode Island, op.cit., 4.


115 Adm. 1/3671-2.
Besides this, Clause Eleven of the 1696 Act implied that there could, or should, be a jury in revenue cases, and this provided fuel for those who preferred trial in the common law courts. This particular debate was not settled in favour of the Vice Admiralty Courts for a dozen years or more. Also troublesome was the phrase "the Court of Admiralty held in his Majesty's plantations". Were the proprietary and corporate colonies "his Majesty's"? This debate reached white heat in Pennsylvania, but it applied also in the Bahamas, where the Crown did not extinguish the Proprietors' jurisdiction until 1718, when Woodes Rogers arrived to eradicate the pirates from that unswept corner.

In the West Indies, a more serious point of contention was that of patronage. Were the Courts even in a Crown Colony strictly speaking the Crown's, that is the Admiralty's, or were they the Governors' Courts? To the metropolitan authorities, colonial offices were not only pawns in the struggle for centralised control, but were

116 (Should a suit in the colonies be brought against a) "ship or goods to be forfeited by reason of any unlawful importation or exportations there shall not be any jury, but of such only as are natives of England. . . ."

117 For example, C.S.P.C. A.W.I., 1702, 585, 596, 708. This lasted until 4 Geo. III, c.15, which ordained Enat offences could be prosecuted in "any Court of Record" as well as Vice Admiralty Courts. See below, IV. . . .

118 Andrews, Colonial Period IV, 380-3, deals with the crucial debate between Proprietor William Penn and Judge Quary of Philadelphia over the jurisdiction of the Vice-Admiralty Court.

119 The Proprietors did not finally relinquish their rights until 1784. Craton, op. cit., 172.
also valuable in their own right, for patronage. Between 1711 and 1763, the Governors fought a losing battle with the Commissioners of the Customs for the appointment of the colonial Naval Officers, but over a longer period a far more strenuous struggle with the Commissioners of the Admiralty to maintain control over the appointment of the officers of the Vice Admiralty Courts.

Having adopted in 1696 a system that was already well-established with half a century of pragmatic experience behind it, the metropolitan power had to tread warily in extending its absolute control over the Caribbean Vice Admiralty Courts. In 1711 it was decreed by Judge Hedges that the practice of the Vice Admiralty Courts should be modelled on that of the High Court of Admiralty, but it was not until much later that it was generally established that no new Court could be set up without Admiralty authority and that no appointment was valid until it had been approved, commissioned, and entered into the Admiralty Muniment Books.

Whether initiated by Governors or Admiralty, however, Caribbean Vice Admiralty Courts could always be extended or multiplied to meet the demand for them. The chief reason that the five Courts authorised


121 See below, III.

122 Adm. 1/3668, 49; Andrews-Towle, op.cit., 15.

123 The Original Patents for Vice Admiralty Courts are in Adm. 5; the patents for Judges and other officers, in Adm. 51.
in 1697 remained unaugmented, and often unnoticed, until 1763 was that generally there was no need for more. After all, the Navigation Acts were chiefly for the benefit of the plantation colonies, and the opposition to the revenue jurisdiction of the Vice Admiralty Courts was most virulent in the settlement colonies of the mainland, which sought to trade more freely than the Acts of Trade allowed. The Molasses Act of 1733, for example, despite its merely partial success, evoked a humble petition of gratitude from the planters of Jamaica to the King and has been called "the first great victory of the West Indies interest". The running battle through Writs of Prohibition, Injunctions and Appeals between the common law courts and the colonists on the one hand and the Vice Admiralty Courts and the imperial Establishment on the other, while it had sympathetic echoes in the West Indies, was far more serious in the mainland colonies. The crescendo of continental discontent and the repeated suggestions for reform of Customs machinery and Vice Admiralty Courts by colonial officials--particularly in Massachusetts--had no parallel in the West Indies, where complaints of Customs officers and

124 Frank W. Pitman, *The Development of the British West Indies, 1700-1763*, New Haven, Yale, 1917, C.XI.


126 For example, by William Bollan, the son-in-law of Governor William Shirley (1749-55), General James Abercromby (1752) and Governor William Popple of Bermuda. *Ibid.*., 216-7, 267-8, 418.
Courts were less numerous than appeals for the tightening of restrictions upon the trade of North America with the foreign West Indies and for more Royal Navy vessels to enforce them. When the Vice Admiralty Courts were eventually reformed between 1764 and 1769, providing salaried Judges and a provincial appellate system, these changes did not extend to the Caribbean, for the problems which it was vainly hoped they would solve were not entirely relevant to the British West Indian colonies.

Not until 1801 did the metropolitan authorities regard the Vice Admiralty Courts as so important for the imperial system that their Judges should be salaried. Throughout the eighteenth century, business in the Courts was insufficient, in normal times, to attract officials forced to live by fees alone, and therefore the infringements of the Navigation Acts that occurred in the West Indies often went unpunished, just as the inevitable ordinary maritime disputes were often unsettled, unless they could be carried to England, or satisfaction extracted in the common law courts in the colonies.

All this changed in wartime. Prizes brought prosperity and popularity to the Vice Admiralty Courts. They were indispensable in helping the Royal Navy and the privateers defend the islands and prosecute the war. It was for these reasons the Admiralty moved to extend its control and impose greater efficiency and uniformity

127 Pitman, _op.cit._, 260.

128 Carl Ubbelohde, _op.cit._, passim. See below, VI.

129 See below, IX.
upon the Vice Admiralty Courts, rather than for the abstract benefit of extending centralised imperial control or the long-term benefit of increasing the web of imperial patronage.130

Soon after the outbreak of war with France in 1689, it was established that Vice Admiralty Courts could only act as Prize Courts when specially commissioned at the outset of a war.131 Then, when large fleets were sent regularly to the Caribbean by the Admiralty for the first time,132 it became necessary to nationalise, and rationalise, the Prize Court system. The Prize Act of 1708—133 largely the work of Sir Charles Hedges, the Judge of the High Court of Admiralty—did away with the old system of Prize Offices and Agents that worked clumsily alongside the Courts in the West Indies.134 Prizes

The Admiralty, after all, was an Interest like most of the Departments of State in the eighteenth century. In no area did inter-departmental interests clash and squabble more than in the Admiralty Courts. See below, V.

Adm. 2/1045. See Joseph D. Doty, The British Admiralty Board as a Factor in Colonial Administration, 1689-1763, Philadelphia, 1930. Once this principle was established, it followed, of course, that common law courts could never again lay claim to try prizes.

In 1697, the Royal Navy kept only 5 small vessels in the West Indies. In 1701, Admiral Benbow was sent out with 10 Third and Fourth Raters, but in 1704, of the 261 vessels in the Navy, only 19 were in American Waters. By 1710-11, however, this had been raised to between 35 and 40, mostly in the West Indies. It was during this war that the three West Indies stations were established; Jamaica, Barbados and the Leewards, Ibid.

5-6 Anne, c.13 and c.37.

See above, 25, 27.
could now be carried to the most convenient Court, which would hold them in custody, organise their sale after condemnation and supervise the prompt payment of prize money to the capturing crews. The shares for the crews of Royal Navy vessels were established by statute; those for privateers were to be fixed in the terms of their contracts. Regulations and procedures for the issue of Letters of Marque, for the prosecution of cases and appeals and the levying of fees were made more uniform. Later Prize Acts, such as that of 1739, were but elaborations of this great basic piece of legislation.

The Caribbean Vice Admiralty Courts as Prize Courts prospered during the wars between 1689 and 1713, but they came to maturity during the wars that extended with hardly a break from 1739 to 1763. As Richard Pares has incomparably shown, the Seven Years' War in particular produced a volume of Vice Admiralty business that enables us to delineate patterns of wartime behaviour--diplomatic, metropolitan, colonial, naval--the origins of which are often ascribed to later wars. More directly, the cases dealt with by the Caribbean Vice Admiralty Courts and the Prize Appeals Court helped to develop legal principles concerning the conduct of belligerents and neutrals that provided guidelines for later, greater conflicts. Later in this study it is hoped to show that in the wars of 1778-83 and 1793-1815,

135 Geo. II, c.4.

136 Ruth M. Bourne, *Queen Anne's Navy in the West Indies*, New Haven, Yale, 1939.

137 *War and Trade: Colonial Blockade*, *opera cit.*
CARIBBEAN VICE ADMIRALTY COURTS
1662 to 1811
With dates of establishment

KEY
- 'Original' Courts of 1697
- Temporary Wartime Courts
- Permanent Additional Courts
these patterns and principles were duplicated and built upon.

One example which it is convenient to mention here was the way in which wartime Prize Court prosperity led to an extension of the scope and number of Caribbean Vice Admiralty Courts. As a result of the Seven Years' War, the system was extended by the establishment of a temporary Court in the captured city of Havana (1763) and the creation of more permanent Courts in the ceded colonies of Dominica, Grenada, and East and West Florida (1764). The temporary Court in Havana was matched by those set up in Santo Domingo (1794), Martinique, and St. Lucia (1795 and 1809), Curaçao (1801), St. Croix (1809), and Guadeloupe (1811); and the extension of Vice Admiralty jurisdiction to newly acquired colonies was duplicated for Tobago (1793), Trinidad (1801), and Demerara (1802).138

So prosperous and active were the Caribbean Vice Admiralty Courts between 1756 and 1763, that zealous Governors were also able to give attention to the infringements of the Acts of Trade that had largely gone undetected or unpunished before. Governor William Shirley of the Bahamas in particular continued on the spot the crusade he had begun in Massachusetts to enforce the imperial system, by harrying the North Americans who traded clandestinely with the French through the neutral port of Monte Christi or by the abuse of Flags of Truce.139

138 See map, between pages 42-44. To this list should be added the courts that proliferated from Antigua, notably St. Kitts (1721) and Tortola (1799). See below, VI, 203-204.

By 1763 the Caribbean Vice Admiralty Courts had come of age. The functions of the Courts—to try pirates, adjudicate prizes, settle maritime disputes, and prosecute infringements of the Acts of Trade—once jumbled together, had been made distinct. The law applied had likewise been established; now there were Acts of Parliament to regulate Prize and Piracy as well as the Mercantile System, and only the ordinary maritime disputes were left to be tried solely by the immemorial Law and Custom of the Sea. The Courts were now more uniformly authorised, controlled, and regulated. Local influences remained extremely strong; but the Courts themselves and the officials acting in them derived their authority from the Crown, Commissions came from the Admiralty, practice and procedure from the High Court of Admiralty. A system had developed which, as will be shown, did not change basically from 1763 to 1815.

Yet it was true to say in 1763 as in 1663 that the Courts came into existence and operated in response to needs, not as agents of a consciously imposed imperial system. Only the needs had changed. The Courts had first emerged in response to local needs—for the disposition of prizes, the suppression of pirates, the settlement of maritime disputes, the enjoyment of the perquisites of Admiralty—with only the flimsiest of metropolitan authorisation or concern. By 1763, they operated in response to these and more sophisticated needs—to satisfy commercial interests;140 to fulfill the desire of naval men and privateers for lucrative prizes, of professional civil lawyers in

140 If only in the negative sense of suppressing illicit trade, particularly the import of clandestine sugars.
Doctors' Commons for employment as officials, drafters of opinions, recipients of the profits of Appeals, of statesmen for patronage, statistical information and freedom from embarrassment at infringements of treaties entered into with foreign powers. But still they only flourished, almost only operated, in wartime. If a more conscious, more consistent imperial system were ever applied, we must look for it during the period from 1763 to 1815, with which the rest of this study deals.
Chapter Two: Personnel and Procedures

In a sense, the study of the law is more difficult for the historian than it is for the ordinary layman, since the law develops organically rather than chronologically. More specifically, legal procedures and the machinery of courts, once they have developed organically and spread from the efficient centre to the less sophisticated periphery, are remarkably resistant to change. This characteristic is a convenient one here, for between 1763 and 1815, neither the procedures nor the personnel of the Vice Admiralty Courts changed radically throughout the colonies. Indeed, since the High Court of Admiralty in England was model for all Vice Admiralty Courts, it can be asserted that what was

Conversely, it is difficult for the legal commentator to think historically. Good examples may be found in the lives of Lord Stowell, in most studies of the Continental System and even of the Anglo-American controversies of 1861-6, in which Stowell is depicted as the originator of most of the principles of maritime law simply because his prize cases in the High Court of Admiralty were the first systematically reported. Pares, for example, has shown that many of these principles were developed during the Seven Years' War, though they probably originated even earlier. Perhaps the most instructive example of the apparent incompatibility between historians and lawyers was the notorious controversy between Charles M. Andrews and Julius Goebel Jr. of Columbia Law School over the former's Introduction to The Records of the Vice Admiralty Court of Rhode Island (1936). Basically, Goebel contended that Andrews indicated by his imprecise use of legal terminology that he misunderstood the nature of colonial Vice-Admiralty Courts; whereupon Andrews countered by accusing Goebel of faulty historical method in inferring general facts from his knowledge of a single Court, that of New York. See A.H.R., January, 1938, 403-6; Andrews, Colonial Period, IV, 222-3.
true for the Cockpit in 1763 was, or would become standard for colonial Vice Admiralty Courts down to the end of the Napoleonic Wars and beyond. Thus, in 1813, when Judge Henry Hinchliffe of Jamaica published his *Rules of Practice for the Vice Admiralty Court of Jamaica*, he was at pains to establish that his invariable standard was the practice of the High Court of Admiralty presided over by the august Sir William Scott, later Lord Stowell, as delineated in Robinson's Reports and Marriott's *Formulary*. Yet, at the beginning of the War, when drawing up a summary of prize court procedures with Sir John Nicholl, the Advocate General, Sir William Scott, then the Solicitor-General, had cited as his own invariable model the rules laid down by the Judge of the High Court of Admiralty, Sir George Lee, in 1753.

*Op.cit.* It was derived from notes dating from 1807; dedicated to Lord Stowell in almost sycophantic terms.

Robinson's *Reports of Cases Argued and Determined in the High Court of Admiralty*... dealt with the cases from 1798-1808; it was continued for 1808-28. Cases for the period before Sir William Scott, for the Judgeships of Lee, Salusbury, Hay and Marriott, were published by F.T. Pratt and R.G. Marsden, but in the latter half of the nineteenth century. See Edward S. Roscoe, *Reports of Prize Cases Determined in the High Court of Admiralty, before the Lords Commissioners in Prize Causes and before the Judicial Committee of the Privy Council from 1745 to 1859*, 2 vols., London, Stevens, 1905. Judge Marriott was the author of the *Formulary* (1802).

Scott and Nicholl to Lord Grenville, September 10, 1794, in Jay-Grenville papers at Columbia. Besides Sir George Lee, the long summary of prize procedures from 1753 quoted was derived from "Dr. Paul His Majesty's Advocate General, Sir Dudley Rider His Majesty's Attorney General and Mr. Murray (afterwards Lord Mansfield) His Majesty's Solicitor General", *ibid.*, 1. Cited in Frederick T. Pratt, *Notes on the Principles and Practice of Prize Courts* by the late Judge Story..., London, Benning, 1854.
This changelessness was particularly true of the Prize Courts. One way in which change was feared in some quarters was in the invasion by Prize procedures of all functions of the Admiralty Courts, including Instance. In 1789, for example, the Committee of the Jamaican Assembly petitioned that this trend should be reversed. Yet, nearly a quarter of a century later, Judge Hinchliffe was asserting that the two basic functions of Instance and Prize were entirely distinct. "The two proceedings are so unlike in their origin and object, and in their mode of appeal", he wrote, "that a suit begun under one jurisdiction can never be proceeded with under the other." Historians are intrigued, if not frustrated, to find that Hinchliffe's Rules applied to Instance cases do not differ essentially from those outlined in The Method or Manner of Proceedings in the High and Honble: Court of Admiralty, in the Island of Barbados Established, which dates from 1700, or from the

5 Report of "Committee Appointed to consider the Effects of the Act or Acts of the Parliament of Great Britain which Vest a Concurrent Jurisdiction in Revenue Causes, and in Cases of Seizures under the Laws of Trade in the Courts of Vice Admiralty in His Majesty's Colonies." Original is in the Journal of the Jamaican House of Assembly. Printed copies are to be found in the Jamaica Archives and in C.O. 137/88. See below,

6 Hinchliffe, op.cit., 52, referring to the case of the Catherine, Lords, 1802. He also made a distinction between Navigation Act and Revenue cases which, in procedures at least, was by then meaningless, if indeed, it had ever had any reality.

cases and forms cited by Judge Hough for New York and Miss Towle for Rhode Island between 1759 and 1783. 8

The parallel concern that the Vice Admiralty Courts as civil law courts were likely to usurp dangerously the functions of the common law courts, was not a developing but rather a perennial complaint. It was voiced by the Jamaican Committeemen of 1789, but it effected as little change then as it had ever done, or was ever to do. 9 Dissatisfaction with the arbitrary and jury-less nature of the Vice Admiralty Courts dated back to the struggle against the Prerogative in England as well as the colonies in the seventeenth century, and it certainly had some influence in antagonising the American colonists. 10 But, as Judge Hough pointed out, the Admiralties of the seceded colonies and United States employed procedures that were remarkably similar, in Instance as in Prize, to those before 1776, and in which the borrowings and derivations from common law practice were obvious. 11 So much for

8 Hough and Towle, opera cit. Both give copious appendices of forms, as well as quote case papers that amply demonstrate procedures. The contention of Judge Hough that the Vice Admiralty Court of New York in early days made its own law largely from common law models, argues more for the ignorance of the bench and bar than for a common process.

9 It was not voiced by the petition of the Jamaican Members in 1774. See below, . For the fate of the 1789 Committee Report, see below, 10Ubbelohde, op.cit., passim. For a fuller discussion of this problem, see below, VI.

11Hough, op.cit., xiii-xxi.
chronological development in the procedures of Admiralty jurisdiction.

Just as the Judge of the High Court of Admiralty enjoyed almost paramount authority within his jurisdiction and great prestige outside it, so the Vice Admiralty Judges were the measure of the importance of Admiralty jurisdiction within the colonies. Appointed under the Great Seal of the Admiralty, they had almost absolute authority within their Courts; and, being appointed "at the royal pleasure", were almost immune to outside interference. Until 1764 in the continental colonies and 1802 in the West Indies, however, they were all dependent upon fees rather than salaries for their income, and were therefore prosperous only when there was much work to be done. As Edward Long wrote in 1774, "in time of peace it is a court of no profit, and of very little if any business." In periods of slackness therefore, Judges were often allowed to appoint deputies, or "Surrogates", and become absentees. Judge Long, for example, despite his many attacks upon absentee planters and officeholders, was absent from Jamaica for 22 of the 37 years of his tenure. As business multiplied, however,

Though, since the Crown had little direct interest, this was tantamount to permanent appointment; or at least, since the Crown generally sacked Judges only for misbehaviour, to appointment "on good behaviour". See below, III.

See below, IX.


For example, ibid., I, 386.

1775-97.
the Judges found it not only profitable but essential to act in person, and sometimes even found the work too pressing for a single judge. Judges could always appoint deputies to take "Foreign Commissions", that is, interrogations and examinations far from the seat of the Court; but from 1804, the Jamaican Judge appointed Surrogates to act almost in the same capacity as himself in the Jamaican "outports", and in 1807 even appointed a Surrogate for Curacao. By 1813, there were three Jamaican Surrogates, residing normally at Montego Bay and Savanna-la-Mar as well as Kingston, with powers to take examinations and stipulations, administer oaths and issue monitions, though apparently only the senior Judge had the power to promulgate sentences, or Decrees as they were called in Admiralty Courts.

Besides the Judge, the basic Admiralty Court officers were the Register, Marshal, and Advocate. The Register was the chief clerk and custodian of the Court, responsible for the issue of all documents, the

17 Adm. 1/3897.

18 Henry Hutchings, appointed January 7, 1807. Hinchliffe-W.W. Pole, February 6, 1808, Adm. 1/3898. A Vice Admiralty Court had been established at Curacao in 1801, but no officials appointed. Curacao, given back to Holland at Amiens, was recaptured in 1805.

19 Hinchliffe, op.cit., 5, calls them "properly Commissioners", but since one of the three was acting for him, he was full Judge in all but name. Adm. 1/3901.

20 Since only one Court was formally in being. There is among the papers in the Jamaican Archives, however, a single Decree from Savanna-la-Mar, though this was probably signed by the chief Judge when sitting there. Curacao, presumably, was a separate Court.
records of cases, the safe keeping of papers and moneys, and the assessment of fees. The Marshal was analogous to the Sheriff in the courts of common law, responsible for taking custody, serving processes, executing sentences and supervising sales. Both Register and Marshal subsisted on fees not salaries, the Register enjoying the undoubted advantage of assessing the bill of fees himself, though this was "taxed", or authorised, by the Judge. Like the Judges, Registers and Marshals were appointed, or confirmed, by the Admiralty and held tenure at pleasure, and despite the tremendous proliferation of business during wartime, both offices were commonly farmed out to deputies throughout the period, the sporadically large profits making them among the most coveted of colonial sinecures. The deputies augmented their incomes, which were particularly meagre during peacetime, by pluralism, serving as notaries, criers, surveyors or marine insurers. The Advocate, usually called King's Advocate or Advocate General, represented the Crown in Admiralty cases in which it had an interest, particularly prosecuting in cases of infringement of Acts of Parliament. Appointed by the Crown on good behaviour and usually a local inhabitant acting in person, the Advocate

21 He was also Sergeant-at-Mace, carrying the Oar which symbolised the Admiralty jurisdiction in processions to open the Court and was laid on the table in front of the Judge whenever the Court was in session.

22 Ubbelohde, op.cit., 9. The only Court officially to appoint a separate Crier appears to have been Bermuda, around 1804. Judge Territ to William Marsden, May 28, 1804, Adm. 1/3896. The Marshal of Antigua combined his duties with those of Provost-Marshal, an unique combination. Apparently he had the power to appoint Deputy Provost Marshals for Tortola and the other Leeward Islands, to act as Marshals for the Vice Admiralty Courts therein. Judge Byam to Marsden, September 5, 1804, Adm. 1/3896 and September 5, 1808, Adm. 1/3898. See below,
held the least profitable of the four basic offices of the Vice Admiralty Courts, and was usually a pluralist, holding also the more important office of colonial Attorney General. 23

In peacetime, or in the more obscure Vice Admiralty Courts, the Judge, Register, Marshal and Advocate were often the only officers of the Courts. As need arose and income warranted, Judges appointed additional clerks and interpreters. Between 1807 and 1813, for example, the Jamaican Court employed no less than five interpreters; two for French, one each for Spanish and Portuguese and a multilingual responsible for translations from Dutch, Danish, Swedish and German. In addition, the Jamaican Court appointed an official Appraiser. 24

The remaining officials who had to be authorised by the Courts were the Proctors, sometimes called Advocates, and the Prize Agents. Proctors were the lawyers licensed by the Judge through "Powers of Procuration" to practise in the Vice Admiralty Courts. 25 Ideally they

23 In the Bahamas he was known as Advocate General and Procurator General. Adm. 1/3898. The distinction is not clear, though it may be analogous to that between the Attorney General and the Solicitor General. In Barbados, a Procurator General was separately appointed, and in Guadeloupe during its occupation between 1811 and 1815, when an Instance Court of Vice Admiralty was set up, there appears to have been a Procurator General but no Advocate General. Adm. 1/3897; 49/57, case of the Rambler.

24 The Appraiser was also called sometimes Surveyor-General of Shipping. The multilingual was Abraham Jacob Osterland, appointed by Judge George Cuthbert in July, 1803. Adm. 1/3895, 3895, 3897, 3898, 3901.

25 Generally for particular cases, though towards the end of the period lists were drawn up in Jamaica at least, of lawyers licensed to practise in the Vice Admiralty Courts. See Jamaica Almanack, 1810. In the Bahamas and Bermuda the instruments were called Letters, not Powers, of Procuration. See cases of Two Sisters (Bermuda, 1800), Hope (Bahamas, 1799).
were experts in maritime law, but it is unlikely that this desideratum was as generally achieved in the colonies as in Doctors' Commons in London. Agents were those persons licensed by "Powers of Agency" in particular cases to act on behalf of either plaintiffs or defendants.\textsuperscript{26}

The convergence of Instance and Prize procedure feared by the Jamaican Assembly and rejected by Judge Hinchliffe, was more apparent than real. Convenience ordained that Instance, Navigation Act and Prize cases were dealt with by the Courts at the same sessions, so that cases are generally found interleaved in the Minute Books of the Courts,\textsuperscript{27} and the desire for uniformity resulted in the terminology of the Instance Court being largely substituted by that of the busier Prize Court. Yet a brief outline of procedures in ordinary Instance cases, Navigation Act, and other Revenue cases, and Prize cases bears out their essential differences.

One of the most attractive aspects of Admiralty jurisdiction was that under it, uniquely, plaintiffs could sue both \emph{in rem} as well as \emph{in personam}, that is against things as well as persons. In Instance cases such as those dealing with wages, contracts such as charter parties, bottomry and partnership, and salvage,\textsuperscript{28} the plaintiff, or "Libellant"

\textsuperscript{26} Among the Jamaican papers is a volume entitled "Letters of Marque and Agency of Prize Captors", which includes 29 Powers of Procuration and 193 Powers of Agency, dating 1762-1802.

\textsuperscript{27} That is, in wartime, when a Prize Court was in commission. This is true, at least of the Minute Books seen in Jamaica and Bermuda (the Antigua Minute Books have not been seen). The Guadeloupe Minute Book, H.C.A. 49/57 deals merely with Instance cases since Guadeloupe's was not a Prize Court. Minute Books provided the bare outline of cases, not the full transcriptions that would have helped towards the requirements of a Court of Record.

\textsuperscript{28} For detailed treatment of the different types of ordinary Instance cases, see Andrews, \emph{Colonial Period}, IV, 230-4; Towle-Andrews, \textit{op.cit.}, 1-75.
as he was called,29 filed his complaint, or "Lible", in the Register's office and a "citation to answer", or "Monition", was issued and exhibited either on the mast of the specified ship or in a suitable public place. In cases of infringement of the Navigation or other Acts, or in any cases in which either the Crown or the Admiralty had an interest,30 the Libellant was generally the Advocate General, though generally the case was initiated by the entry of an "Information" by an official such as the Collector of Customs before the formal Libel was entered.31

Before the expiration of the Monition,32 the "Claimant"--either the owner of the libelled vessel or goods or the person specified--was expected to enter his "declinator", or "Claim",33 which was argued by him or his Proctor before the Court. If this did not satisfy the Judge, he would then call upon the Claimant for an "Answer", or

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29 Also sometimes called Relator, a term that originated with the Prize Court. In no aspect is there more interchange of labels than in the names given to plaintiffs and defendants in Admiralty cases. On the earlier mixtures, see Hough, op.cit., xii-xiv.

30 These jure coronae and "Admiralty Droits" included cases involving wrecks, flotsam, jetsam and royal fish, salvage, recaptures and captures without proper commissions. Besides the Navigation Acts proper, there were certain Revenue Acts, the White Pine Laws and the Slave Regulations. Cases of infringements of monopolies granted had died out with the monopolies themselves, by 1697.

31 There are examples, however, of "information-Libles" in Bermuda. For a more normal procedure, see the case of the Rambler (Guadeloupe Instance Court, 1811), H.C.A. 49/57, 1. Information was entered by Waifer-Searcher J.J. Ketchum, February 23, 1811 of actions dating back to February 6, accompanied by a Libel prosecuted by Peter Hunter, Procurator-General, on behalf of the King, citing Acts of 25 Car. II, 6 Geo. II and 4 Geo. III. See below, 50.

32 Generally, after 20 days, though extensions were often granted by the Judge. Hinchliffe, op.cit., 14.

33 The term Claim also originated in actions for Prize. Sometimes called Depositions.
lengthier defence of his actions. To this, the Libellant would make his reply, termed "Exceptions", which were examined by the Register and reported on to the Judge, at which stage the Claimant could make his own Exceptions to the Exceptions. Both sides could examine witnesses, or have them examined by the Court after filing their "Interrogatories" with the Register. For each stage there was a maximum time allowance, after which the case proceeded by default.

At last, when the case was considered ready for a judicial hearing and a place found for it on the calendar, a "Monition to Proceed to Judgement" was issued against the Claimant and the case was argued before the Judge by the Proctors on both sides, who had probably been appointed at the beginning of the case by Powers of Procuration. In ordinary Instance cases, if the Judge found for the Libellants he usually decreed that the vessel or goods themselves should be liable to satisfaction. He thereupon issued a primum decretum, or "Interlocutory

34 In the Bahamas there is at least one example of an "Answer and Claim", filed August 3, 1798, in the case of the schooner Hope.

35 Generally five days, except in the case of the Claim. Hinchliffe, op.cit., 5, 9. For example, if a defendant failed to enter a Claim, this was tantamount to acceptance of the Libel; if a Claimant failed to enter an Answer, the Judge would accept a petition from the Libellant to proceed to immediate sentence; if the Libellant failed to enter Exceptions, this was regarded as an invitation for the Claimant to ask the Judge to proceed immediately on the merits of the Libel and Answer.

36 This was the normal procedure. The Claimant himself could petition for a Monition if the Libellant defaulted. See note 35 above.
Decree", directing the Marshal to organise an Appraisement. This having been made by the official Appraiser or specially appointed Appraisers\textsuperscript{37} upon oath, the \textit{ultimum decretum}, or "Final Decree", was drawn up and signed and sealed by the Judge. The Marshal then organised the sale of the vessel or goods at "public outcry" or "inch of candle", that is, by auction,\textsuperscript{38} providing the buyer with a certificate of sale and paying the proceeds into the Register's office for the Register to apportion them.

In Navigation Act cases, the Claimant could petition to make "Stipulation", or bond, for the amount of the vessel or goods libelled. Upon granting such a petition, the Judge would issue a "Warrant of Appraisement", whereupon the Appraiser or Appraisers would assess the value of the vessel or goods and make a return thereof to the Register. Then the Claimant would enter into "Stipulation Bonds", or a promise to pay, upon two securities, the full value of vessel or goods upon a condemnation and confiscation being decreed, whereupon the vessel or goods would be released from custody to the Claimant. In the event of an acquittal, the Judge usually awarded costs to the Claimant,

\textsuperscript{37}In jurisdictions where there was no official Appraiser, the usual procedure was for the Marshal to obtain authorisation for three of five specialists such as carpenters, shipwrights or chandlers, to act as Appraisers, their Appraisement being certified by an affidavit upon oath. See Barbados case, C.O. 28/5, doc. 2, vi, 2.

\textsuperscript{38}"Public Outcry" appears to have been any type of auction. "Inch of Candle" was the ingenious method whereby the last bidder when the short candle sputtered out became the buyer.
though very seldom damages. 39

The sequence of procedure in Instance cases varied far more in each Court than from Court to Court, according to the varied circumstances in each particular case. A chronological account of the papers entered in one relatively simple Navigation Act infringement case in which all have survived—from Guadeloupe in 1811—40 however, may help to illustrate the foregoing general account.

On February 23, 1811, J. J. Ketchum, Waiter and Searcher of Pointe-a-Pitre, entered an Information that on February 6, the American schooner Rambler, 75-tons, of which Silas Sayre was the Master, arrived at Pointe-a-Pitre and declared at the Custom House a cargo of white pine planking and shingles, bunches of onions and 500 boxes of smoked herrings. Going aboard while the herrings were being unloaded, Ketchum suspected after conversation with the Mate that the number of boxes had been understated. He therefore ordered the unloading stopped and had the hatches sealed. On February 9, he examined the cargo and found 280 undeclared boxes of herrings, indicating that as many as 900 might have come into port. He thereupon prayed the Procurator-General for the clandestine goods to be libelled.

39 An exception was the 1811 Guadeloupe case of the Chance (Laroque vs. Gibson) in which the owners of the acquitted vessel were awarded restitution for detention, damage and demurrage. H.C.A. 49/57, 27. Procedures in Instance and Navigation Act cases were collated from Barbados C.O. 28/5, forms in Hough and Towle, opera cit., Hinchliffe, op.cit., and cases from Jamaica, Bahamas, Bermuda.

40 H.C.A. 49/57, 1.
The Libel, signed by Peter Hunter, Procurator-General, on behalf of the King, was also dated February 23, 1811. Citing Navigation Acts of 25 Charles II, 6 George II and 4 George III, which last required forfeiture of clandestine goods and a fine of thrice their value, it specified 360 cases of smoked herrings outlined the circumstances of the seizure and begged Vice Admiralty Judge John Maxwell to do justice and decree forfeiture, fine and costs.

The third document, dated February 25, 1811, was a "Bail Bond" for £64 costs signed on behalf of Silas Sayre by one William Hutchins, accepted by John Martin the Register on the report of Joseph Conolly, the Marshal. The Monition, dated three days later and signed by the Register, mentioned Ketchum's Information, invited a Claim and indicated that in the event of a condemnation, one-third of the proceeds would go to the King, one-third to the Governor and one-third to the prosecutor.

The Claim, dated March 18, 1811, took the form of four Depositions made on oath before Peter Hunter in his function as "Notary Public for Trade and Shipping" by Silas Sayre, John Godbee the Mate, Nathan Andrews and James Godfrey, Seamen. Sayre claimed that the extra boxes were the "private ventures" of the crew of which he had been largely ignorant, believing that each man had embarked no more than eight or ten, and that when he had tried to declare these boxes at the Custom House upon their discovery, he had been prevented by the Waiter and Searcher. In their turn, Godbee, Andrews and Godfrey deposed that they had embarked as private ventures respectively 180, 80 and 60 boxes of herrings.

The sixth document was a "Deposition" addressed to Judge Maxwell,
dated March 26, 1811 in which Silas Sayre stated that, on the advice of his Agent, John Hutchins, he was prepared to accept adjudication for illegal entry for three times the value of the goods and costs. His throwing himself on the mercy of the Court was perhaps well-advised, for the Decree--dated the same day--while declaring 360 boxes, not 320, legal prize as illegal imports and valuing them at $1 a box, ordered the payment of only half the legal penalty and costs and said nothing of forfeiture.

The last two documents in the Rambler case were a "Certification of Decree" dated March 27, 1811, and an undated Account of Fees, totalling £59.15.4. Of this, £18.16.7 went to the Judge, £22.8.3 to the Procurator General, £10.0.3 to the Register and £8.10.3 to the Marshal.41

Procedures in Prize cases, being governed to a large extent by the Prize Acts,42 bore certain resemblances to those in cases of Navigation Act infringement, but fewer to ordinary Instance cases. The first actions on the part of the captor after bringing in a seized vessel were usually to send to the Court the vessel's papers, certified upon oath by the Prize Master of the capturing vessel in an

41 The approximation of the actual costs (£59.15.4) to the amount bonded for costs (£64) is worthy of note. As their shares of the £540 fine (that is, £\frac{360 \times 3}{2} \times \frac{1}{3} ), King George III, the Governor and J.J. Ketchum presumably received £180 apiece. Thus this seven-week adventure cost Silas Sayre, his crew or the owners of the Rambler, no less than £599.15.4. See below, 64-9.

42 That is, in our period, those of 1708, 1739, 1776, 1777, 1778, 1793, 1797, 1798, 1801, 1803, 1805 and 1809. The most complete was 45 Geo. III, c. 72, clause 43 of which outlined Vice-Admiralty Court procedure.
affidavit,43 to draw up a Libel or preliminary personal charge, and to petition the Court to issue a Monition.44 If no papers were forthcoming, an affidavit to this effect accompanied the captor's Libel. Although ship's papers without an accompanying affidavit were no more than "a dead letter",45 properly certified absence of proper papers, with or without evidence of jettisoning, was almost tantamount to an admission of guilt.46 Likewise, double or conflicting papers were regarded as sure evidence of "colouration" or fraud and possible proof of guilt.

43 Stating, "that such papers and writings arought in and delivered into the hands of the Judge as they were received, taken and found, without any fraud, addition, subtraction, alteration or embezzlement whatsoever, save in the marking or numbering thereof." Hinchliffe, op.cit., 2. If the Master of the seized vessel were willing, he could sign an affidavit that the papers were correct. The ships' papers retained along with the case papers are among the most interesting and valuable of all archival materials. They were, of course, of tremendous variety, but among them were Articles of Agreement, invoices, manifests, bills of lading, clearances, bills of sale and exchange, business letters, letters of instructions and private correspondence, contracts, charter parties, deeds of bottomry, insurance certificates, passports, licences, registration documents, logs, navigation handbooks, printed Acts and newspapers. For further treatment of some of these, see below, VI-VIII.

44 For examples of Libel and Monition (Prize), see Appendices A, B.

45 Hinchliffe, op.cit., 5.

46 Or at least evidence of Probable Cause. Scott-Nicholl, op.cit., 3.
Either at the same time as bringing in the ship's papers, or within five days, the captors were expected to produce witnesses in preparatio, normally the master, supercargo and mate of the captured vessel. These persons, or the most responsible crew members obtainable, were examined before the Court upon a very exacting set of "Standing Interrogatories" provided for all Vice Admiralty Prize Courts by the Admiralty, consisting of between thirty and forty questions.

Cases of as many as six sets of Preparatory Examinations exist in the Jamaica papers.

A description of the questions posed in the Standing Interrogatories provides an excellent insight into the thoroughness of the Admiralty Courts and the directions of their interests, as well as an understanding of the value of these documents as source material for the historian. The Standing Interrogatories issued in August, 1778 (Adm. 2/1059, 369-85, August 5, 1778), which were not greatly different from those of the Seven Years' War, or much changed later, asked:

1. Where was the answerer born, where he now lived and for how long, where he had lived for the last seven years, or what country was he a subject or burgher and for how long had he been so?
2. Was he present at the seizure; if not, what was his connexion?
3. Where and when was the capture made, why was it seized, and where carried; what colours was it sailing under; did it resist, and if so how many guns were fired and by whom; whom was the capturer, a warship or a non-commissioned vessel?
4. Who was the master, how long had the answerer known him, who appointed him and where and when did he take possession and from whom; where does the deliverer of the vessel live, and where the Master; where was the Master born, of what country was he subject, did he have a wife and if so, what family and where?
5. What was the tonnage of the vessel, the number and nationalities of the mariners; who hired them, when and where?
6. What shares in the cargo and vessel had the Master and mariners; what was the capacity of the answerer on board, when was he first hired, when did he first see the vessel and where was it built?
7. What were the present and former names of the vessel; was a passport or seabrief aboard; where did the voyage begin, what ports had been and were to be called at and where was the voyage to end; what types of cargo had the vessel previously carried, and where?
8. What was the lading on this voyage, at setting out and on seizure; where was it put on board?
9. Who owned the vessel when seized; what was their nationality now and when born, where did they live and what families did they have; what proof could the answerer show to these facts?
10. Was there a bill of sale for the vessel; if not, where was it, and what were the details of it?
11. Was all the cargo loaded together; if not, where, what and when.
12. What were the names of the owners, laders and consignees of the cargo; their nationalities, residence and place of business; where were goods to be delivered and at whose real account, risk and benefit? Would the answerer swear to these facts?
13. How many bills of lading were there; were any "colourable" or duplicated; if so, where were the others?
14. Were there any bills of lading, invoices, letters or instructions in England or elsewhere relative to the vessel and cargo?
15. Was there a charter party, and if so, what were its details?
16. What papers were on board on clearing the last port; were any destroyed or concealed?
17. Had the vessel ever been a prize before; if, what were the details?
18. Had the answerer sustained any loss by the seizure?
19. Were the vessel and cargo insured, and if so, for what voyage, when, by whom and with whom, and what was the premium?
20. Was the cargo on unloading to become the property of a consignee, or another or was the lader to "take the chance of the market" for the sale of his goods?
21. Of what country's growth, produce or manufacture was the cargo?
22. Was the cargo to be unloaded on shore or transshipped?
23. Were there any papers relative to either vessel or cargo in England, elsewhere or on any other vessel?
24. Had any papers been carried away by force?
25. Had "bulk been broken", and if so, by whom and where?
26. Were there any passengers aboard; if so, what were their names, nationalities, titles, professions, where were they taken aboard, when and why, and whither were they bound; were any passengers hidden; were any soldiers, sailors or officers and were any Britons?
27. Were any of the documents aboard colourable, were any dubious; if there was a passport aboard, where was it obtained, and was it for a single voyage?
28. If documents were elsewhere, why was this so, and who had them; had the answerer signed any documents?
29. Where was the vessel sailing when taken, was this different from originally intended destination and how far from the destination was the vessel?
30. By whom and to whom has the vessel been sold or transferred, if it has been; and if so, for what price and upon what and whose securities?
31. Were there guns aboard or warlike stores, and if so what and why; were they genuinely for defence or for sale; were any thrown overboard or concealed? If guns were aboard, who authorised them, when and where?
32. Was the foregoing the whole truth concerning the ownership and destination of the vessel and cargo?
33. (For captured vessel only) When, where and how was the vessel captured, how long was it held by the enemy, how were the crew treated and what ransomes, if any, were levied?

The answers, often voluminous as can be imagined, were ordered to be entered into the Registry of the Vice Admiralty Court, "to remain of record". Of the 155 or so questions, several were subtly repetitious.
The next stage was for the Proctor acting for the defendants—or Claimants—to file a Claim, or detailed defence against the accusation detailed in the Libel and mentioned in the Monition, which had by now been posted in the usual place on the three occasions statutorily required. At the same time, the Claimant was expected to provide Stipulation Bonds upon securities for £60, in case the Judge decreed costs against him.

When the Claim had been made and entered, the captors, or "Relators" as they were generally called, made their counter or final charge, called "Allegation", petitioning at the same time that the case proceed to sentence. In cases where haste was imperative, or delaying tactics were feared, the Claimants could also petition on filing their Claim that the Relators produce their Allegation without delay and that the case proceed to sentence. Likewise, if the captors after seizing the vessel did not libel it within a reasonable time, the owners could file Claim for adjudication, restitution and damages.

In due course, the Register would publish a date for the case to be heard. Meanwhile, he had had an Inventory of the ship's papers

49 If the Claim were not filed within the statutory 20 days after the third Monition, the Relators filed their Allegation nonetheless, praying for adjudication at the first free date. Hinchliffe, op.cit., 14. Although not part of the formal procedure, this stage was normally the occasion of the notification by a neutral Master of his capture and the libelling of his vessel and/or cargo in the Vice Admiralty Court to his country's Ambassador or Consul-General in London, via the correspondent of his owner. Scott-Nicholl, op.cit., 5.

50 Also often called simply Depositions. See below, page 70, notes 62, 63.

51 Hinchliffe, op.cit., 44.

52 Sometimes some weeks ahead through pressure of business. For the question of delays, see below, pages 87-91.
drawn up, so that the Proctors for the Relators could examine them, as well as the Preparatory Examinations and the Claim in order to prepare their case. The Proctors for the Claimants could not likewise examine the papers until after the publication of the date for the case. Both sides could petition the Court for further witnesses and for the delays necessary to subpoena them or to undertake a Foreign Commission. The Court, or the Proctors of either side with the approval of the Court, could invoke any relevant papers other than those found on shipboard.

Inventories of cargoes were usually ordered by the Judge soon after capture and in cases involving perishable cargo the Court might order, or permit upon petition, its unloading and sale after an Appraisement had been made. In this case, the Marshal would conduct the sale and the proceeds would be lodged in the Register's office. For their part, the Claimants might petition the Court to be allowed to sell either vessel or cargo upon the payment of Stipulation Bonds for twice the amount of their appraised value in the event of a condemnation. If the petition were allowed, the vessel and cargo were appraised and then, after the sale, the Claimants bound to give account for the net proceeds. In some cases, the Relators were allowed on petition to sell the cargo, though only on entering into Stipulation Bonds for twice its value in the event of an acquittal. Commonly,

53 Hinchliffe, op.cit., 15.

54 Ibid.

55 Ibid.
however, no sales were allowed until after sentence. Vessels were scarcely ever sold before sentence.\(^{56}\)

In due course, the case would formally be heard, and judged upon the ship's papers, the Preparatory Examinations and the arguments presented by the Proctors.\(^ {57}\) Decrees—as in Instance and Navigation Act cases—were of three kinds: Interlocutory and Final Decrees in the case of condemnations and Decrees or Restitution in the case of acquittals. Decrees were seldom final in the first instance, except in cases involving enemy warships, where the speedy payment of "Head Money" to the captors was desired.\(^ {58}\) Interlocutory Decrees gave possession of the vessel and cargo, but held up sales of either until a proper Appraisement could be made, or until the sales entered into or authorised by the Court could be completed and the Marshal's returns made to the Register. Decrees might condemn a cargo and acquit a vessel, or condemn only part of a cargo.\(^ {59}\) Even in the case of complete acquittal, costs were

\(^ {56}\) That is, before an Interlocutory Decree. The example of the overhasty disposal of goods and vessels at St. Eustatius in 1779 and the subsequent litigation which bedevilled Admiral Rodney for the rest of his life, was a salutary one. See John F. Jameson, "St. Eustatius in the American Revolution", American Historical Review, viii, July, 1903.

\(^ {57}\) Scott-Nicholl, \textit{op.cit.}, 2; Hinchliffe, \textit{op.cit.}, 16.

\(^ {58}\) Hinchliffe, \textit{op.cit.}, 18. Head Money was the shares paid out to the crews of capturing naval vessels. For an example of a Decree in Prize, see Appendix C.

\(^ {59}\) For example, to condemn cargo owned by an enemy yet to acquit ship's stores or the private ventures of Master and crew if neutrals. When vessels seized were proved recaptures they were decreed as Salvage and the Relators received only an eighth of their value.
sometimes awarded to the Relators upon the Judge decreeing "Probable Cause", or reasonable grounds for suspicion and seizure.  

Prize cases, being generally more valuable and therefore more complex than Instance cases, were subject to an even greater procedural variation, to an almost infinite degree. The foregoing general outline could perhaps be made clearer, however, by the simple chronological listing of the papers in a Jamaican case, that of the American brig Nancy, taken by the privateer schooner Scorpion off L'Islette on October 21, 1793, which, although more involved than average, was typical in all senses save that the papers have remained intact:

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60 This applied even on occasion in Navigation Act cases (see, for example, H.C.A. 49/57, Rapid). It was to provide incentives for captors, who sometimes desisted for fear of acquittals, especially in cases where vessels and cargoes were of negligible value. See below, VII. Reasons for assigning Probable Cause were outlined by Scott and Nicholl, op. cit., 3: "To enforce these Rules, if there be false or colourable Papers; if any Papers be thrown overboard; if the Master and Officers examined in Preparatio grossly prevaricate; if proper Ship's Papers are not on Board; or if the Master and Crew can't say, whether the Ship or Cargo be the Property of a Friend or Enemy, the Laws of Nations, allows according to the different Degrees of Misbehaviour, or Suspicion, arising from the Fault of the Ship taken, and other Circumstances of the Case, Costs to be paid, or not to be received, by the Claimant, in Case of Acquittal and Restitution. On the other Hand, if a Seizure is made without probable Cause the Captor is adjudged to pay Costs and Damages: For which Purpose all Privateers are obliged to give Security for their good Behaviour; and this is referred to, and expressly stipulated, by many Treaties."

Procedures in Prize collated from Scott-Nicholl, Hough, Towle, and Hinchcliffe, opera cit. and cases from Jamaica, Bahamas and Bermuda.

61 JVAC 1216 Similar cases from Jamaica were Indostan (1796), JVAC 1419 (14 weeks) and Altona (1798), JVAC 1688 (13 weeks).
Ship's Papers with Affidavit: October 25, 1793
Preparatory Examinations: 26
Libel: November 11
Affidavit of Prizemaster: 11
Monition: 15
Order to Inventory Cargo: 27
Claimant's Power of Procuration: December 2
First Claim: 2
Stipulation (1): 2
Petition for Commission to Interrogate Witnesses: 2
Relators' Power of Agency: 4
Relators' Power of Procuration: 4
Petition for Time to Revise Claim: 5
Interrogatories (1): 5
Depositions (1): 6
Second Claim: 24
Stipulation (2): 24
Petition for Commission in Chief: 28
Interrogatories (2): 28
Depositions (2): January 8, 1794
Petition to Sell Cargo: February 1
Appraisement: 3
Stipulation to Account for Net Proceeds: 27
Petition for Publication: March 3
Condemnation (of Part of Cargo): 27

The courts specially commissioned by colonial Governors to try cases of piracy, mutiny, murder and other felonies committed on the High Seas, called either Oyer and Terminus Courts of Admiralty or Courts of Admiralty Sessions, were properly distinct from Vice Admiralty Courts of Instance, Revenue and Prize in origins, functions and procedure, and by 1763 had become almost completely distinct in fact, even though Judge, Register, and Marshal usually functioned prominently in the cases

62 Presumably, the Allegation or Relator's Answer to the Claim.
63 That is, the Relator's Answer to the Second Claim.
64 By the Claimants.
and the papers were generally lodged in the Admiralty archives. Felonies could not be tried in the jury-less ordinary Admiralty Courts, and crimes committed on the High Seas could not be tried in the ordinary common law courts, being subject to international rather than national law. Courts of Admiralty Sessions were therefore of a peculiar jurisdiction, with procedures owing much to common law, but something also to civil law in general and Admiralty law in particular, and were summoned only when needed. The colonial Governor sat on the bench as President of the Court, along with the Vice-Admiralty Judge, the Chief Justice, and sometimes other "Commissioners" or Judges, and the cases were tried before a Grand Jury of up to 23 members.

The first stage of procedure was for the Clerk of Arraigns, who was invariably the Register of the Vice Admiralty Court, to attend the Governor with details of the alleged felons awaiting trial. The Governor then fixed upon a time and place for the trial, which was announced by a public notice posted and verbally announced by the Crier, who was usually the Vice Admiralty Marshal. The Clerk of Arraigns then prepared a writ of venire facias for the jurors.

65 True at least of Jamaica, where Goeffry Yates found 53 Oyer and Terminer cases for 1741-83, including mutiny, murder, manslaughter and theft. The fees were not levied in the way described for normal Admiralty cases below, pages 64-9, but were generally petitioned from the Assembly, at least in Jamaica, where an Act to this purpose was passed in 1770. See Jamaica, Journals of Assembly, Vol. 6 (1766-76), 554.

66 Commonly six, as in the Bahamas when Woodes Rogers tried 12 pirates soon after his arrival in 1718. Craton, op.cit., 106.

67 The number summoned in Jamaica around 1750.
The session on the day set was attended with considerable ceremony. After a parade of the Commissioners to the place appointed for the Court, the Crier called for silence and the Commission was read and the Proclamation for the Grand Jury made. The President then read the charge and swore in two Constables, and the Grand Jury proceeded to consider the Bill of Indictment, in due course making their findings, for a billa vera, billa falsa or ignoramus. In the event of a True Bill being found, the accused would then be arraigned, make his or their plea and argue the cases before the bench. The final verdict and sentence rested with the Commissioners, being handed down by the President. As with the ordinary common law courts in the colonies, appeals could be made from decisions in Courts of Admiralty Sessions to the Governor-in-Council sitting as a Court of Errors, or through the usual channels of appeals in colonial common law cases, up to the Privy Council and the King himself. In some cases, Governors exercised the prerogative of mercy, even though they had sat as President of the Court which made the condemnation.68

68 As Woodes Rogers in the Bahamas. Craton, op.cit., 106. The procedural details given here, however, derive from a rough draft of procedures, undated, found in the Jamaican Vice-Admiralty papers by Yates.
never finally resolved the problems of interlocking jurisdiction. 69

There were three major tribunals to which appeals from colonial
Vice Admiralty decisions could be made: the High Court of Admiralty,
the Privy Council and the Lords Commissioners of Prize Appeals. At
a superficial study it would appear that the proper place for appeals
from ordinary Instance cases was the High Court of Admiralty, 70 from
Navigation Act infringement and other Revenue cases to the Privy Council 71
and from Prize cases to the Lords Commissioners of Prize Appeals. 72 In
fact, this would be an erroneous simplification. As Professor Joseph
Smith has shown, 73 there were even more cases of intra-colonial review
through Courts of Error, though these, being inexpert and of dubious

69 Andrews, Crump, Hough and Towle, opera cit., practically ignore
Appeals. Ubbelohde deals only with the special appellate courts set up
between 1764 and 1769, and Pares deals exclusively with Prize Appeals. The
most authoritative source is Joseph H. Smith, Appeals to the Privy Council
from the American Plantations, New York, Columbia, 1950, but he concentrates
on Privy Council jurisdiction and his references to other Appeals are
muddled by a failure to distinguish clearly between ordinary Instance,
Revenue and Prize matters.

70 On the assumption that Vice Admiralty Courts were offshoots
of the High Court of Admiralty and that ordinary maritime cases were the
basis of the business of both.

71 On the assumption that the King-in-Council was the ultimate
tribunal for cases arising out of Acts of Parliament.

72 On the assumption that the Lords Commissioners of Prize Appeals
were commissioned in wartime directly for this purpose, at the same time
as the Vice Admiralty Courts were commissioned as Prize Courts.

73 Smith, op.cit., 177-202, 658.
validity were seldom resorted to and their decisions usually over-ruled.\textsuperscript{74} The latest certain cases appear to date from 1729-30.\textsuperscript{75}

But if intra-colonial review was discounted, there was little unanimity as to where appeals should be prosecuted in England. The Privy Council was regarded by many lawyers as the only ultimate tribunal and, at least up until 1750, there were examples of all types of colonial Vice Admiralty cases being appealed to the Privy Council; criminal, Instance, Revenue and even Prize.\textsuperscript{76} Navigation Act cases were particularly confused. Since they could only be prosecuted in common law courts in England and yet in both common law and Vice Admiralty Courts in the colonies, it seemed plausible that colonial appeals might be heard by either the Privy Council or the High Court of Admiralty. There was always doubt, however, whether an appellate court had jurisdiction which it did not enjoy in the first instance.

To add to the confusion (though it may have been designed to remove it), there was another appellate body, the High Court of Delegates, representing

\textsuperscript{74}For example, the Jamaican Kensington case of 1716, in which Governor Lord Archibald Hamilton's scandalous attempt to preside in an appeal against the condemnation of a vessel captured by a privateer which he partly owned, was over-ruled by the transfer of the appeal to the Lords Commissioners of Prize Appeals, who reversed the condemnation. See Lord A. Hamilton, \textit{An Answer to an Anonymous Libel Entitled Articles Exhibited against Lord Archibald Hamilton}, London, 1718, cited by Smith, \textit{op.cit.}, 202.

\textsuperscript{75}Toller vs. Burke in the Leewards, in which the Catherine, having been forfeited for piracy, was restored by the Court of Errors. When taken to the Privy Council, this decision was reversed, on the grounds that the Court of Errors had no Admiralty jurisdiction. APC Col., 293.

\textsuperscript{76}See Smith, \textit{op.cit.}, II. There is some doubt as to his contention about Prize Appeals, since at least one case he cites (the Elizabeth from New York in 1751) was during a period when England was officially at peace. Navigation Act seizures were commonly termed prizes at least until 1720.
some of the legal functions of the Privy Council, which dealt with appeals from the High Court of Admiralty, though it is not clear whether it could further review appeals already made from the Vice-Admiralty Courts to the High Court of Admiralty.\textsuperscript{77}

Even when the special Vice Admiralty Courts with appellate jurisdiction were set up at Halifax, Boston, Philadelphia, and Charleston between 1764 and 1769,\textsuperscript{78} the confusion persisted. There were practically no appeals to these short-lived Courts and a contemporary decision held that "either of the parties... (could still) appeal either to us in Council, or to our High Court of Admiralty; or from thence to our High Court of Delegates, as usual."\textsuperscript{79}

The only certainty is that during the period 1763-1815,\textsuperscript{80} Prize cases, which constituted probably 90\% of the business of the Caribbean Courts\textsuperscript{81} were only appealed to the Lords Commissioners of Prize Appeals. Moreover, this type of appeal made up the majority of all Caribbean Vice Admiralty appeals to England, rising to a climax during the period after the outbreak of the war with France in 1793. Professor Smith was only able to trace 82 appeals from all colonial

\textsuperscript{77}There were also cases, cited by Smith, \textit{op.cit.}, 186-7, of appeals direct to the Lords Commissioners of the Admiralty (a non-judicial body), of appeals direct to the High Court of Delegates and even to the Lords Commissioners of Appeals in Prize Cases from Navigation Act cases.

\textsuperscript{78}See above, I, 38, and below, VI, 156-8.

\textsuperscript{79}Pennsylvania Archives 3rd. series, 381. Smith, \textit{op.cit.}, Smith challenged Andrews' contention (\textit{Colonial Period}, IV, 271) that they were courts of last resort.

\textsuperscript{80}The last Prize appeal to the Privy Council cited by Smith was in 1751.

\textsuperscript{81}See below, 221, 266.
Vice Admiralty Courts to the Privy Council down to 1783, and has stated that he believed that the total number of colonial appeals to the High Court of Admiralty for the same period "would be less than, or not greater than" the number to the Privy Council, but that the number of appeals to the Lords Commissioners of Prize Appeals "substantially exceeds" the total to the Privy Council and the High Court of Admiralty combined. An analysis of the papers of the Jamaican Vice Admiralty Court shows that between 1763 and 1802 there were barely a dozen appeals from Instance or Navigation Act cases, but 285 appeals from Prize decisions, of which no less than 271 dated from the period 1793-1802. This period during which Prize appeals multiplied coincided with that during which Sir William Scott was becoming the dominant figure in the High Court of Admiralty, and it is fitting that the only extant manual of appeal procedure deals with Prize appeals and comes from the pen of Sir William Scott himself.

If either Claimant or Relator were dissatisfied with the sentence of the Vice Admiralty Court and wished to appeal, he entered

82 *Op. cit.*,.

83 In private correspondence, November 15, 1965. At that time, Professor Smith stated that he was working on a study of Appeals from the colonies to the High Court of Admiralty down to 1783, but this apparently has not yet (1967) appeared.

84 For a table of Jamaican Appeal figures, see Table A, below, 361.

85 The Scott-Nicholl Memoir of 1794, *op. cit.*, 8-12. Considering the confusion of the question, it is perhaps excusable that we do not feel ourselves competent to examine procedures in any but Prize Appeals. But it is apparent that Appeals to the Lords Commissioners of Prize Appeals (which are lodged with the High Court of Admiralty Papers as H.C.A. 42) bore many similarities to Appeals to the H.C.A. in Instance and Revenue cases.
a petition to appeal in the local Registry within fourteen days, and at the same time instructed a Proctor to obtain from the Registry of the Lords Commissioners of Prize Appeals, within nine months of the sentence unless reasonable cause could be proved for the delay, an instrument called an "Inhibition", providing at the same time security for £200 to answer costs. The Inhibition was an order to the Vice Admiralty Judge to halt proceedings in the case, to the local Register to transmit a copy of the proceedings of the Vice Admiralty Court, and to the successful party in the earlier case to appear before the higher tribunal. In most Vice Admiralty cases it was usual for the appellee to obtain copies of proceedings on applying for an appeal, sending them to his Proctor in London to help him in obtaining the Inhibition, though the basic requirements were simply a copy of the Judge's authorisation for the appeal, with an account of the time and substance of the sentence.

Appeal cases were heard chiefly on the original evidence, on the procedure and findings of the lower Court and on the arguments of

86 Which was conveniently adjacent to the Registry of the H.C.A. in Doctors' Commons. Scott and Nicholl call them "Lords of Appeal in Prize Causes".

87 It was three months in the case of decisions by the H.C.A. itself.

88 "...in case it should appear to the Court of Appeals that the Appeal is merely vexatious." Scott-Nicholl, op.cit., 9; a splendid licence!

89 Each of the three was to be shown the original Inhibition with its seal, and to be given "a note or copy of the contents." Ibid. If the successful party or his Proctor could not be found, or refused service, the copy was to be affixed in a prominent public place. The Inhibition could be served by anyone, but an affidavit of service had to be sworn before the Vice-Admiralty Judge and inscribed on the back.

90 Scott-Nicholl, op.cit., 10.
the appeal Proctors, but the Lords Commissioners could authorise, or even order independently, fresh evidence if they considered that the Vice Admiralty Judge should have ordered "Further Proof" in the first place.91 This evidence usually consisted of affidavits sworn before Notaries Public or British Consuls appended to documents such as originals of correspondence and duplicates of papers relating to cargoes and the registration and ownership of vessels; but the Commissioners in exceptional cases could also admit, or order witnesses from either side in "Plea and Proof". As in the Vice Admiralty Courts, these witnesses made Depositions in writing or wrote answers to challenges by the other side made in the form of approved sets of Interrogatories. Witnesses in appeal cases could even be examined by Foreign Commissions.92

The functions of the Vice Admiralty Courts were not limited to the purely judicial, in peace or war. Judges by their normal Commissions could order surveys, settle estates and act as administrators and receivers; in wartime they were granted special Commissions to issue Letters of Marque to privateers. In cases of wrecks, damage or change of ownership, through a petition from Governor, Receiver General,93

91Ibid.

92It is not the purpose of this study to become further involved in appeal jurisdiction than necessary to understand the Vice Admiralty Courts. As Andrews lamented, no authoritative study has been made of the High Court of Admiralty, let alone the Prize Appeals Court, and the papers in the H.C.A. 42 series, besides being extremely difficult of access and handling—not to mention dirty—are sadly deficient. Of the 14 known Appeals from Jamaica between 1775 and 1783, for example, only three could be traced at the Public Record Office, in only one of which was there an indication of the outcome. Besides this, none included any Further Proof, being merely duplicates of papers better preserved in Jamaica. Pares, for example, studied Appeals cases, faute de mieux.

93In his concern to collect Admiralty or Crown Droits.
captain, salvor, insurer, mortgage-holder, bankrupt or legatee, or on his own initiative, the Vice Admiralty Judge might issue a Warrant of Survey to estimate the value, damage or cost of repair, refloating or salvage. Their assessments of costs were usually regarded as authorised fees. When employed as administrators and receivers, Judges might order inventories and audits, supervise sales, authorise the Register to keep monies or securities and even settle accounts.94

The Judge's authority to issue Letters of Marque came from the Admiralty, included in the Commission issued at the beginning of a war constituting a Prize Court for the duration, but the initiative came from the colonial Governors. The Crown first commissioned the Admiralty to issue "Letters of Marque and Reprisals" to qualified applicants and the Admiralty thereon authorised Governors, by a Warrant under the Great Seal of the Admiralty, to receive applications and to order the Vice Admiralty Judges, by a Warrant under the colonial Seal, to issue Letters of Marque to such applicants, subject to the provisions of Instructions sent out at the same time to Governors and Judges under the Royal Sign Manual. The procedure for would-be privateers therefore was to apply first to the Governor's Office, giving details of the privateering vessel, including tonnage, type, rig, armament, and number of crew, and the names of the owner, master, and two deputys. These would be entered in a warrant, called a "Fiat", signed by the Governor and witnessed by the Attorney General, to be carried to the Registry of the

Vice Admiralty Court. The Register would draw up the Letter of Marque, copying the details in the Fiat and inserting the proviso requiring privateers to keep a log and report intelligence. After levying the securities also required by the Royal Instructions, he would have the Judge sign and seal the document and the privateer was then in business.95

The non-judicial functions of Vice Admiralty Courts were generally recognised as being for the benefit of the maritime community in the colonies and were not often subject to attacks. But even in the judicial sphere, as will be shown later, it was less the law applied than the method of its application, especially the costs and delays of litigation, that was commonly attacked. It is therefore fitting to conclude this chapter with a brief discussion of these two contentious aspects of Vice Admiralty procedure.

Except for the principle that fees and commission would normally constitute the sole payment of Vice Admiralty Court officials and the expectation that scales would generally conform to the practice of the High Court of Admiralty,96 there was more variation from Court to Court in the matter of fees than in any other.97 Although Courts tended to be secretive about their charges, their general standards were well-known.

95For a typical Fiat for a Letter of Marque, from the Bahamas in 1801, which illustrates all the foregoing points, see Appendix F, 365. For further discussion of privateers, see below, VI, 189-225.

96Lyttleton's request for a salary was turned down on these grounds in Jamaica as early as 1667. C.S.P.C. A.W.I., 1661-8, 530, 531, 535, cited in Crump, op.cit., 111.

97Scales examined include those from Antigua in H.C.A. 49/98, Bermuda in V.A. 241/1 and Jamaica in Long, op.cit., 1, 78.
and captors sometimes carried seized vessels far out of their way to
Courts reputed to be more moderate in their charges. 99 Competition
between Courts and the law of diminishing returns may have kept Court
costs down to a reasonable level, but the close correlation between
the value of the cases and the size of the bills of costs gave rise
to the suspicion that the more valuable cases were made unnecessarily
complicated and prolonged in order to boost fees. 100

Generally the scales of fees were authorised by local legislation,
but once established were so long-lived that their origins and details
became shrouded in mystery. 101 Judges, Registers, Marshals, and Proctors
were all paid separately for every item of business, so that final bills
of costs, while moderate in detail, were often extremely large in total.

Judges were paid for every examination and oath they administered,
for every order, decree or certificate they authorised and for every

99 For example, Nelson’s carrying of the Louisa and Jane & Elizabeth
to Antigua from Barbados in 1786 to escape Judge Weekes. Adm. 1/2223 ‘N’,
1782–8, and below, VII

100 Certainly ordinary Instance cases, which generally involved
smallish sums of money, usually went more quickly through the Courts and
cost far less than more valuable seizures under the Navigation Acts or
of prizes, and the Vice-Admiralty Courts were commonly accused in peacetime
of prolonging cases unnecessarily to boost their meagre fees.

101 In 1789, the Assembly Committee in Jamaica claimed that Vice
Admiralty fees were "unascertained by any law"; yet, as Edward Long pointed
out (History of Jamaica I, 78) they were legally established under
Governor Beeston in 1697. Apparently these fees remained in force until
1805. Besides this, it was rarely clear whether fees were assessed in
Sterling or in local "Currency", that is, at what was usually a 1/3
discount.
document, such as a Letter of Marque, issued under the official Seal of the Court. They were also paid a small flat rate for every case tried in their Court; but the bulk of their income came from a percentage on the sale of condemned vessels and goods. This share, which averaged about 3%, was, understandably, the cause of much suspicion, and Edward Long himself used it as an argument for salaried Judges, pointing out that "the sole judge, accountable to none for errors of judgement, is exposed to great temptations; and must be a man of much virtue and integrity." The other officials had less to gain directly from condemnations,

102 Which generally featured a ship prominently, with some such motto as "Pateat Tell Ocean" (Jamaica) around the rim. The rate for issuing Letters of Marque varied greatly, from £2.6.8 in Bermuda, to £16.10.0 in Antigua, though the rate for other documents only varied roughly 10/6 to £1.10.0.

103 In Jamaica, the Judge received 3.10.0 for each case, plus 3% on the first £100 of value and 1% thereafter, on condemnations. Elsewhere, the overall rate was 3 1/2% or even higher. Long, op.cit., 1, 78; Hough Note Q, op.cit., 283-4.

104 Long, ibid. See also Corbett, in the Secretary of Admiralty's Precedent Book (1730), who mentioned that the Judges "having no Salaries, consult nothing but their Fees, and prostitute the dignity of the courts for the sake of gain." Quoted by Crump, op.cit., 159.
but showed great ingenuity in multiplying documents and processes.\(^{105}\) The Register charged for reading, entering and filing every document brought into Court, for translations and copies, and for each document issued.\(^{106}\) Rates for documents written in the Registry were per folio page, an often accepted invitation to proxility.\(^{107}\) The Register also

105 Judge Hough shows an impressive example from New York in 1772, where the four services of the Monition and the consequent Defaults produced thirty two entries in the final bill. Op.cit., 283-4. Daniel Moore, Proctor and one of the witnesses before the 1789 Jamaica Committee, testified that, "The Examination of Witnesses by Interrogatories must necessarily occasion both Delay and Expence in as much as the Interrogatories are first to be drawn by the Proctors they are then laid before Council [sic]; having been settled by Council and engrossed, a Petition must be prepared by [for?] the Judge for a Commission to take the Examinations the Commission is then made out by the Register for which and for filing the Petition he charges the Party. The Interrogatories are then delivered to him who charges first for filing the Interrogatories; then his Trouble taking the depositions then for a fair Copy of them, then for filing and when Publication proves it is necessary for each Party to take a Copy of the examinations on both sides and to furnish the Judge and their Council with Briefs of them, these Circumstances occasion an enormous Expence and much Delay, a further Delay is Occasioned by there being no Process (that I have heard of) to compel Witnesses to an early Attendance, so that when there are a Number to be examined (as they will only attend at their own Convenience) the Delay becomes greatly Increased."

106 Including the bill of costs. Presumably, however, he had to pay the clerks and translators.

107 The Bermuda rate was 1/6d. a page, which was supposed to contain at least 90 words. According to Thomas Myers, another Proctor witness before the 1789 Jamaican Committee, the Jamaican rate was rather higher. "From the evidence of all in writing for Instance," he testified, "the Register charges both Parties for all Attendances for attending and taking depositions at fifteen Shillings a side that is one fourth of a Sheet of Post or Pott paper then a Copy to file at Seven Shillings and Six pence after which there is registering & recording Proceedings, reclusive of the Register's Bill the proctor's Bills are necessarily Increased by preparing copying and Engrossing Interrogations & making Briefs of all the Examinations."
received fees for attendance in Court and for services obtained from the Judge; but perhaps his most lucrative perquisite was the right to charge 5% on all moneys held. The Marshal was paid for making each proclamation, for serving each process, writ and attachment, and for attendance at Court and at Appraisals; but the majority of his income came from his perquisite of making a commission of 5% on sales.

The fees charged by Proctors, being levied directly from clients, were not generally fixed by the Court, but the Judge had the power to "tax", or approve, them. Proctors usually charged a retaining fee, fees for each attendance in Court and for every document drawn up. In Prize cases, the 5% commission charged by the Prize Agent was an additional cost, though to blame this upon the Vice Admiralty Court, which had little control over it, was unfair. The Advocate did not enjoy fees, but subsisted on the proceeds of the Crown's share of condemnations and his own occasional profits as prosecutor, supplemented in most cases by his income as Attorney General.

Bills of costs varied as much as the cases for which they charged. Generally they were high in wartime and even higher in

108 Or, more strictly, "received and paid" (Antigua, 1805), which implies a double levy in most cases.

109 That is, on sales by order of the Court. In Antigua, it was 5% on the first $100 and 2 1/2% thereafter.

110 The Agents' charges, however, were often certified by the Court.
peacetime, when the officials of the Court had fewer cases to subsist on.\footnote{See below, 226-53.} Sometimes bills appear extremely modest, but this is usually illusory. Among the Jamaican papers is a partial "List of Fees" for 1781 which totals £2666.5.0 for 75 vessels tried, an average of only £35.8.6 each, with extremes of £70 and £17.10.0;\footnote{Typescript in Calendar, probably a copy, with names of vessels. Most of these vessels were Spanish, presumably small coastal schooners of little worth.} but these are almost certainly the bare Court costs, without the Proctors' fees and the Judge's share of the proceeds, not to mention the Marshals and Agents' commissions. A far better picture of the costs, and profits of Vice-Admiralty cases can be gathered from a volume also in the Jamaican Archives labelled "Bills of Sale, 1799-1800",\footnote{No Archive number. This is a record of expenses certified by the Court for the benefit of captors, mostly of the Royal Navy. Among other things, it demonstrates a remarkable lack of system in the assessing of Court expenses.} which gives costs in considerable detail. In the case of the \textit{Cantabria}, prize to H.M.S. Apollo,\footnote{No records in Vice-Admiralty papers.} for example, the vessel realised £5,600 and the cargo £20,280. The commission to the Agents, Messrs. Willis and Waterhouse, amounted to £1,294. The Court costs totalled £137.10.10, made up of Judge's fee (G. Cuthbert), £28.0.0, Register's fee (J. Pedley), £34.10.0, Marshal's fee (J. Bean), £25.8.4 and Proctor's fee (C.W. Alder), £49.12.6.

The schooner \textit{Nancy}, and her cargo prize to H.M.S. \textit{Juno} and H.M.S. \textit{Lark} in March, 1801,\footnote{JVAC 2587.} realised £4,874.13.4, but assorted expenses...
totalled £436.8.5, made up of commission, £243.14.8, charges for keeping the vessel and hiring two negroes, £47, water pilotage, £5, pumping out the hold, £8.2.1, Proctors, with Judge and Register, £122.6.8, Marshal, £9.5.0 and "Cryer", 13/8d. Similarly, for the Prize cargoes brought in by the privateers Robert and Flying Fish, the total realised at auction was £2,548.16.4, but the expenses were no less than £527.9.0. Commission to Messrs. Donaldson, Grant, Forbes and Stewart amounted to £127.9.9 and Customs House charges were £8.5.0. The Vice Admiralty Court, however, accounted for £369.1.8, made up of Proctor's bill, £290.14.2, Register's bill, £55.17.6, Judge Surrogate, £6.8.4 and Deputy Marshal, £16.1.8.

By and large, the expense of a Vice Admiralty Court case appears to have varied from about 5% to about 20% of the value of vessel and cargo, of which the officers of the Court might have made as little as a quarter or as much as the whole. The total of fees in an Instance

116 JVAC 2308-10.

117 In none of these cases does the Marshal appear to have conducted the sale. In this case, the Judge's percentage of sale appears to have been omitted.

118 That is, where condemnations were involved. The acquittal of a rich merchant ship would usually give a much lower figure, of course, though in any case, Appeals might treble expenses.

119 The lower figure where the Agents and Proctors took the lions' share; the higher in uncontested cases where the prize was mediocre.
case or in the case of the seizure of an insignificant vessel might be small, but the proportion of the total value involved comparatively high;\textsuperscript{120} the proportion of the total value of a rich merchant vessel and cargo condemned which expenses represented might be relatively low, but the actual amount princely.\textsuperscript{121} In Instance and Navigation Act cases, the income of the Court officials appear to have been proportionally higher than in Prize cases,\textsuperscript{122} but the flooding tide of business more than compensated for the loss.

The actual profits of the officers of the Vice Admiralty Courts are even harder to assess accurately. The Prize Agents and Proctors appear to have made more money, but their expenses were greater and many of them had to share the business of the Courts. In the Courts, three men, with their deputies, shared all the business and the fees attached, often with little work and negligible expenses. From the final bills it often appears that the Register earned more than the Judge himself; but he had to pay for clerks and interpreters. The Marshal too had the expense of assistants. Only the Judge enjoyed an income almost free from expenses, bounded only by the business of his Court, burdened merely with the responsibility of drafting decrees and the tiresome consequences of a faulty judgement.

\textsuperscript{120}In some cases, Court expenses exceeded the value. This was said to deter Royal Navy captains from bringing in insignificant prizes, and to lead them to libel such small fry in flotillas.

\textsuperscript{121}Some vessels and cargoes condemned are said to have been worth £500,000. The Malumbruno was said to have cost £2,004.15.6 to gain an acquittal (1789). See below,

\textsuperscript{122}If only because of the absence of Prize Agents and their 5% commission.
As Edward Long well knew, profits in peacetime were non-existent. In Barbados during the Peace of Amiens, Judge Blenman resigned "on account of not finding his profits as Judge adequate to the loss he sustained in his practice as a Barrister" and after the wars were over, Judge Territ of Bermuda wrote gloomily that "the Business of the Instance Court being in general very trifling the Profits arising from fees will not, I think, exceed £15, or £20, per Annum, should they even amount to so much..." War transformed the situation, though official estimates tended to be on the conservative side. Governor Parry of Barbados wrote in 1784 that the post of Register, while worth only about £50 a year in peacetime, would bring in at least eight times that amount in the event of war. In 1775, Governor Keith of Jamaica estimated that in wartime the Judge of the Vice Admiralty Court should make £1,200 a year, the Register a like amount and the Marshal, £800. The Governor probably arrived at these totals from an estimate of profits made during the Seven Years' War; but the volume of Prize Court business for the subsequent wars far outstripped that of the years between 1756 and 1763. Even taking the clearly

124 Governor Seaforth-Evan Nepean, July 27, 1803, Adm. 1/3821.
125 William Territ-John Barrow, March 10, 1816, Adm. 1/3904.
126 Parry-Philip Stephens, May 3, 1784, Adm. 1/3820.
127 C.O. 137/70,95 sqq. Keith estimated that the Advocate General would make £1,500 in wartime, besides his normal emoluments of about £800 as Attorney General. The Provost Marshal and Clerk of the Chancery Court received about £2,800 a year apiece.
128 See below, 221, 266
understated figures for 1781 as an average for the war years between 1776 and 1815, the annual average profits to the officers of the Jamaican Vice Admiralty Court must have been at least twice the figures predicted by Governor Keith. On a less conservative estimate, justified by an examination of the actual bills of costs for the French Revolutionary War, it is likely that his figures were multiplied by four, and maybe six. In wartime at least, minor fortunes were made in the Vice Admiralty Courts, though never on the splendid, and ultimately scandalous, scale of the High Court of Admiralty.

As with other methods of boosting Vice Admiralty Court fees, artificial delays were more likely in arid peacetime than in the flood conditions of wartime. Yet, during wars, the calendars of the Courts were often so crowded that delays were inevitable. A detailed analysis

129 See above, 84.

130 There were approximately 3,400 prize cases for the 27 years of war. At £35 each, this would average out at more than £6,000 a year for the three major Vice Admiralty Court officials.

131 After 1803, the Judges were quite happy to receive a salary of £2,000 but as we shall see, they were not entirely deprived of other emoluments. See below, IX, 300-38.

132 In 1804, Sir William Scott admitted that there was £624,913 in the Registry of the H.C.A. from Dutch prizes alone. In the 1810-12 debates, in the House of Lords, Lord Cochrane alleged that in two years, 9,000 cases had been tried by Sir William Scott and that their value had averaged £1,000,000 a year since 1803 (CPC xix, November 2-5, 476-93), that Lord Arden the Register made £30,000 a year including £7,000 in interest on money held (CPC xxiii, June 9, 1812, 626) and that the King's Advocate made £30,000 and the King's Proctor, probably £40,000 (CPD xv, October 1-3, 1810, 469).
of cases, however, shows that, in Jamaica in wartime at least, the accusation of procrastination was ill-founded and that the Vice Admiralty Courts was probably among the most efficient of contemporary courts. Moreover, complaints of dilatoriness should hardly be surprising. Seizure itself was a great inconvenience to a merchant, and often there were long delays before seized vessels could be brought to port and Court. 133 Neither the lengthiest voyage under prize crew nor the most protracted Vice Admiralty case, however, could rival the almost stalagtitic proceedings of the Courts of Appeal in England. 134

Geoffrey Yates, in the Introduction to the as yet unpublished calendar of the Jamaican Court for 1776-1783, examines in some detail the process of bringing the American sloop Kitty and its cargo to condemnation. Captured by the privateer sloop Gayton off Cape Nicholas Mole on April 12, 1778, she was libelled at Kingston just ten days later, but not condemned until October 8. 135 The case, however, was by

133 For example, the pathetic tale of the Lady Charlotte told by Archibald Thompson before the 1789 Jamaican Committee, in which the cargo was plundered and spoiled by water, a valuable freight was lost through the delay, the Master and crew had innumerable expenses on shore, and when the case was over (and the vessel was acquitted) and the unfortunate mariners took sail once more, the vessel was wrecked in a hurricane. See below, 245-7.

134 For example, the eight Jamaican appeal cases of which details can be traced in the Spanish Town papers (JVAC 821, 978, 1006, 1016, 1027, 1031, 1275), from the start of the case until the handing down of the Appeal Decree averaged five years and four months. The least protracted cases were those of the Les Deux Amis, JVAC 978 and the Adventure, JVAC 1029, took just about three years (16/9/1786-13/7/1789 and 13/3/1788-21/6/1791 respectively); whereas in the case of the Phoenix, JVAC 821, it was ten years before the litigation was laid to rest (1782-92).

135 JVAC 252. On a previous voyage under different ownership, the Kitty had been taken by the same privateer and unsuccessfully libelled in the Vice-Admiralty Court in Nassau. On this second occasion, the Gayton's First Mate is quoted as saying, "Ay damme--what have I caught you again? I'll now take care you shall go up to Jamaica."
no means typical; the delays that extended the condemnation almost six months after the capture were largely to accommodate the Claimants in a case that had many difficult aspects. Similar mitigating conditions applied in the case of the American brig Nancy, already quoted,\(^{136}\) in which a vessel captured on October 21 was not condemned until March 27 in the following year. In this case, the delays were made inevitable by the petition of the Claimants to enter a second Claim and the consequent need for Foreign Commissions.

Both of these cases took longer than usual because they were less straightforward than the average. The 96 Jamaican cases of which we have full record for 1779, middle year of the American War of Independence, took an average of seven weeks and two days only, from the time of seizure to the handing down of the Decree, with three cases concluded in the commendable space of three weeks. Fastest of all concerned the French prize ship La Justine, taken 25-30 leagues north of Grand Caicos by the privateer ship Bellona on July 23, 1779, and condemned in Kingston on August 10.\(^{137}\) Nor were procedures noticeably slower in the following war. The average time between seizure and Decree for the 118 cases of which we have full record in 1798 was still only seven weeks and four days, an insignificant increase.\(^{138}\)

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\(^{136}\)Above, 68-9.

\(^{137}\)JVAC 391.

\(^{138}\)Of these, 64 took six weeks or less; 28 took 10 weeks or more.
between 1784 and 1792, when the pressure of war was off and the Jamaican Vice Admiralty Court was practically dormant, appear to have taken an average of exactly eleven weeks to conclude. This pace aroused the anger of the 1789 Committee of Assembly, but it is hardly enough to condemn the Court out of hand.

Although remarkably informal by common law court standards, the Vice Admiralty Courts must have been expensive to keep in session, and in peacetime pressure of business does not appear to have persuaded it to meet much more than once a month. In wartime, the Court was practically continuously in session, even meeting on Christmas Day in some years. Besides this, examination of the Minute Book indicates, in peace as well as war, an adherence to procedures so logical as to be predictable, and so assiduous as to arouse admiration for efficiency, once the procedure itself is understood and accepted.

In summary, it may be asserted that each Vice Admiralty Court had more similarities to than differences from every other; and that just as each derived from the High Court of Admiralty, so the degree to which each emulated the senior court was an index of its sophistication. In early days or when business was meagre the connexion with the High Court and with each other was tenuous, and every Court tended naturally to develop peculiar terminology, slight variations

139 See below, 242-9.

140 As does E. Arnott Robertson, The Spanish Town Papers, London, 1952, an amusing but extremely inaccurate study of the papers for 1776-1783.

141 The Judge, for example, examined witnesses and took oaths in chambers and could hold the Court where he willed. The Minute Book is not always to be taken as a literal account of sessions actually held in the Court House.
in procedure and different scales of fees. But as practice became more prolific and profitable so procedures became more general, until in 1813 Judge Hinchliffe could boast that his Jamaican Court at least was modelled in every respect upon that presided over by Sir William Scott. None the less, it is probably true to say that a Judge of 1763--provided with the laws and casebooks--could have presided quite comfortably in a Vice Admiralty Court of 1815,\textsuperscript{142} and that Registers, Marshals, and Proctors of the Waterloo era, while they might have dazzled their predecessors of the time of the Seven Years' War with their expertise, would have shown them little that was essentially new.

\textsuperscript{142}Judge Edward Byam of Antigua, appointed in 1776, did in fact survive 1815. See below, III.
Chapter Three: Appointments, Patronage and the Quality of Personnel

The general principles for appointing the personnel of West Indian Vice Admiralty Courts were established long before 1763. Authority for the four major officers in each court was derived from a commission under the Great Seal of the Admiralty and tenure was technically "at the royal pleasure". Considerable local patronage, however, remained in 1763. Local Governors on the authority of their commissions as Vice Admirals did select candidates to fill the offices of Judge, Register, Marshal and Advocate of the colonial Vice Admiralties as they became vacant by death or resignation, and even retained the power of dismissing officers for corruption, extortion or inefficiency. Once nominated by colonial Governors, candidates acted with full competence until official confirmation was requested and received from the Lords Commissioner of the Admiralty. Indeed, in the remoter and less lucrative colonies, such as the Leeward and Virgin Islands, confirmation was rarely asked for and vacancies were locally filled with very little metropolitan supervision or control. In 1777, for example, Governor Burt of the Leewards told the Admiralty that "in these Islands they never had any Commission from the Lords of the Admiralty but always acted under one

from the Commander in Chief";\(^2\) and as late as 1808 the Admiralty was trying to unravel local appointments made to the Virgin Islands as far back as 1783.\(^3\)

Gradually, however, local powers of patronage were whittled away. Admiralty appointments were less susceptible to reform than those more directly under the Crown, but nevertheless became subject to the same kind of pressures as those which brought control of colonial patent offices more firmly in the hands of the metropolis during the eighteenth century.\(^4\) The spurt of reform that followed the loss of the American colonies and produced Burke and Shelburne's Patronage Acts\(^5\) left Admiralty appointments practically untouched, but gradually the notion gained ground that all Admiralty appointees were not just fortunate sinecurists but civil servants, chosen for their qualifications and responsible not to local interests or even the patronage-mongers of the imperial government, but directly to the Admiralty. This increased professionalism became particularly apparent after 1798 with the appointment of Sir William Scott as Judge of the High Court of Admiralty, when Vice Admiralty patronage and the control of Vice Admiralty officers came more firmly under the supervision

\(^2\)W.M. Burt to Lords Commissioner, December 16, 1777, Adm. 1/3885, referring to the appointment of George Leonard as the Judge of the Vice Admiralty Court at Tortola.

\(^3\)M.D. French to Lords Commissioner, July 6, 1808, Adm. 1/3898.


\(^5\)20 Geo. III, c. and 22 Geo. III, c. 75.
of the High Court of Admiralty itself. By 1815 this process had been almost completed and the officers of at least the major Vice Admiralty Courts in the Caribbean were reliable professionals, free of local influences and almost fully under the control of the imperial Admiralty.

The formal procedures for filling vacancies in Vice Admiralty offices changed little from 1763 to 1815. Colonial Governors were provided with Commissions as Vice Admirals on going out to their posts\(^6\) and although they gradually lost the power to dismiss recalcitrant officials, the inevitable delay in communications made at least temporary local appointments to fill vacancies by death or resignation imperative. The normal procedure was for the Governor to empower a replacement by a "Fiat" under the colonial Seal, writing at the same time to the Lords Commissioner of the Admiralty for confirmation. If the Admiralty Lords approved the appointment, the Secretary would fill out a Warrant for a Commission and send it to the High Court of Admiralty, which would then order an Admiralty Solicitor to draft the Commission in the usual form. Once signed and sealed by the Register of the High Court, the Commission would be sent out to the colonial official after the appointment had been duly registered in the Admiralty Muniment Book, along with whatever instructions thought necessary.\(^7\)


\(^7\) A colonial Fiat signed by Lieutenant Governor Nugent for Judge H.J. Hinchliffe of Jamaica dated January 20, 1804, and the consequent Royal Commission, dated May 20, 1804, are in Appendix F, 365.
New Vice Admiralty Courts, whether the request for them emanated from colonial Governors or the Lords Commissioner of the Admiralty, were similarly commissioned. Governors of new colonies were specifically empowered to erect courts and appoint officials. At the outbreak of war, Commissions for Prize Courts were sent out to each Vice-Admiralty Judge, along with Instructions and lists of Standing Interrogatories. At the accession of a new monarch, fresh Commissions for Courts and officials were required, though this, of course, did not occur between 1763 and 1815.

In the period between the Seven Years' War and the American War of Independence, colonial requests for the confirmation of Vice Admiralty appointments by Governors appear to have led to almost automatic confirmation. Indeed, some of the requests came from the officials themselves rather than the Governors, with the obvious intention of obtaining greater security of tenure than was afforded by a purely local appointment. Governors when writing themselves, clearly regarded their

8 For example, Milnes, the first British Governor of Martinique, appointed Judge, Register, Marshal and Advocate in August, 1795, by special instructions of the Lords Commissioner; Charles Cottrell to Evan Nepean, December 12, 1799, Adm. 1/3894.

9 Though in May, 1763, Judge John Blenman of Barbados told Governor Pinfold that he wished to resign, both because fees had dried up and because the Lords of the Admiralty had not renewed his Commission on the accession of George III in 1760; Charles Pinfold to John Cleveland, May 7 and June 30, 1763, Adm. 1/3819.

10 A good example is the request of John Maynard, appointed Judge at Barbados by Governor Pinfold, dated May 29, 1763, which was inscribed "let him know their Ldps have complied with his request" by John Cleveland, Secretary of the Admiralty; Maynard to Cleveland, May 29, 1763, Adm. 1/3883. See also, Edward Byam, Judge of the Leewards, to Philip Stephens, June 25, 1776, and Edward Brownrigg, Surrogate of Jamaica, to Stephens, September 10, 1776, Adm. 1/3884.
letters to the Admiralty more as notification than requests, though by 1773 Lieutenant Governor Dalling of Jamaica when asking Lord Sandwich to confirm his appointment of Thomas Harrison as King's Advocate as well as Attorney General asked it as a personal favour and only if His Lordship had no-one else in mind.

Vacancies generally occurred only by death or resignation, though some of the resignations may have been tantamount to dismissals. In the cases of Governors considering themselves obliged to sack Vice Admiralty officials, it was clearly necessary for the Governors to provide the Admiralty with adequate explanations. Governor Burt of the Leewards, for example, sending a request for the confirmation of George Leonard as Judge of the Tortola Vice Admiralty Court in 1773, explained why he had been forced to dismiss Leonard's predecessor, Mr. Chalivil: "Whether his Misconduct proceeded from his great Age of 84, and his Understanding was impair'd or undue Influence I know not; but I have great Reason to believe the latter."

With the coming of the American War of Independence and the ascendancy of the reforming Lord Shelburne, it became increasingly difficult for colonial Governors to dismiss officials at will. Three cases, in the Bahamas, Jamaica, and Barbados between 1779 and 1781,

11 For example, the notification by Governor William Spry (himself a Doctor of Civil Law and an ex-Vice Admiralty Judge) that he had appointed Thomas Miller Judge of the Vice Admiralty Court in Barbados; Spry to Stephens, May 27, 1769, Adm. 1/3884.

12 Dalling to Sandwich, November 24, 1773, ibid.

13 Burt to Lords Commissioner, December 16, 1777, Adm. 1/3885.

practically extinguished the right of Governors to use their own discretion in sacking Vice Admiralty officials.

Thomas Atwood, having been dismissed as Vice Admiralty Judge by Governor Montfort Browne of the Bahamas, complained angrily to the Admiralty in December, 1779 that this was "Because I wo\ld not tread in the Steps of my predecessor Robert Cuming and act contrary to the several Statutes, Proclamations, Commissions, Instructions and Directions from your honourable Board, which I faithfully made the Rule of my Conduct." Governor Browne, called to account by the Lords Commissioner, accused Atwood of acting in collusion with the Privateers in the colony who provided a "Faction in opposition to Government." The dismissal was narrowly upheld, but the subsequent actions of Atwood's successor, Samuel Gambier, in aiding the illicit trade with the Americans and French in Hispaniola must have given the Admiralty food for thought concerning the advisability of allowing Governors too much influence over the choice of Vice Admiralty Court officials.16

A far more celebrated and important case than that of Thomas

15 Atwood to Rt. Hon. Henry Penton, December 13, 1779; Browne to Atwood, December 9, 1779, Adm. 1/3885. Also, Thomas de Grey to Stephens, April 7, 1780, Adm. 1/4141.

16 Strangely enough, Samuel Gambier, during an earlier tenure of the Judgeship during the Seven Years' War had been accused of being sent to the Bahamas "fee'd, hired and employ'd by the Philadelphians concerned in holding Correspondence and Communication with, aiding, supplying, supporting, relieving, comforting and assisting the...French...having openly and avow'dly both in Court & Out of Court declared...Flag of Truc'ing a fair, honest and legal Trade." In 1776, Montfort Browne had been accused of doing nothing to stop the American "invasion" of Nassau led by Admiral Ezekial Hopkins, though he himself was captured. Craton, Bahamas, op.cit., 145, 153-6. Samuel Gambier was the brother of John Gambier, acting Governor of the Bahamas, 1758-60, who was father of the famous Admiral Lord James Gambier (1756-1833). Samuel Gambier died in 1781.
Atwood was the conflict in 1780 between Governor Dalling and Thomas Harrison in Jamaica. The dispute originated in the division of the spoils of the expedition against Omoa in 1779, which Dalling had adjudicated in his own "Exchequer Court" rather than in the Vice Admiralty Court, presumably with the aim of augmenting his share of the profits.\(^\text{17}\) In January, 1780, Thomas Harrison, who combined the functions of Attorney General with those of Advocate General, demurred and remonstrated with the Governor for taking advice from independent counsel rather than from his Attorney General. After a heated argument, in which Dalling charged Harrison with divided interest and called him "Drunkard Lyer Impertinent", Harrison resigned his Attorney Generalship. The Governor thereupon suspended him from his office of Advocate General as well.

Harrison appealed to the Admiralty, who ordered Dalling in May, 1780, to reinstate him, on the grounds that there was no evidence of malversation against him and that his resignation of the Attorney Generalship was no justification for the suspension of his office of Advocate General. Lord Sandwich wrote directly to Harrison to inform him of this decision, but there was much delay before he was reinstated, because neither the Deputy Register nor the Surrogate Judge would readmit him to his office without direct orders from the Governor or the

\(^{17}\)He was advised that this way at least a tenth of the value of spoils was his by virtue of his office as Vice Admiral, whereas the Vice Admiralty Court was likely to declare the "Admiral's Tenth" an Admiralty Droit, and lodge it in the Registry pending further adjudication in London; Memorial by Edward Barry, Dalling's Secretary, January 24, 1780, C.O. 137/76. It is worth noticing that Admiralty Droits went to the Crown, which in practice meant the Advocate General, who, as we have seen, depended on such windfalls for his remuneration. Harrison, therefore, was as much financially interested as Governor Dalling.
Admiralty. Relevant orders were sent out in September, 1780, but it was not until December that Harrison was able to send news of the Surrogate's surrender and render thanks to the Lords Commissioner for their support.\(^{18}\)

Out of the Harrison case came two important precepts: that the posts of Advocate General and Attorney General should be kept as distinct as possible, and that the powers of colonial Governors to control Vice Admiralty officials should be severely curtailed.\(^{19}\) The second of these principles was soon upheld in the case of Judge Nathanial Weekes, suspended by Governor Cunningham of Barbados in May, 1781. Weekes complained to the Secretary of the Admiralty that "For doing my duty to the Crown, for supporting the legal Rights of the Subject, and for refusing to be under any bias [sic] or influence in my judicial Department, I am most cruelly and wantonly punished", and his hopes for justice as a "brother officer of the same Court with yourself" were rewarded by an order of reinstatement being sent to the Governor.\(^{20}\) Despite frequent attacks,\(^{21}\) Judge Weekes survived in 18 C.O. 137/76-80; Adm. 1/3820; Adm. 1/3886; Adm. 2/1060, 262. The Harrison case is dealt with extensively in George Metcalf, Royal Government and Political Conflict in Jamaica, 1729-1783, London, Longmans for the Royal Commonwealth Society, Imperial Studies xxvii, 1965.


\(^{19}\)The Omoa booty also provided several important precedents on the question of the division of the spoils of war between naval and military forces in amphibious operations. See, for example, P.R.O. 30/8, 3596 (1795).

\(^{20}\)Adm. 1/3887.

\(^{21}\)For example, by Captains Collingwood and Nelson in 1786. See below, VII, 233-42.
office until 1795, and then was only displaced after he had been presented before the Grand Jury for "oppression and extortion".22

Grenville's Act in 1782 to control the West Indian patent offices did not attack the officers of the Vice Admiralty Courts, largely because the preliminary report by Samuel Estwick of Barbados claimed that they were firmly under the authority of the Lords Commissioner of the Admiralty and, besides, their fees were trifling.23 These statements were exaggerated, but the years after the American War did see the Admiralty extend its control. Governors continued to fill temporary vacancies, but they were expected to do no more than advise permanent appointments or to complain of irregularities. Governor Clarke of Jamaica in 1785, for example, merely advised the permanent appointment of Judge G.C. Ricketts, although Ricketts was admirably qualified and connected, and in 1789, Judge Alexander Stewart of Dominica was only sacked by the Lords Commissioner of the Admiralty after Governor Orde had written to the Secretary of State Wyndham Grenville as well as the Secretary of the Admiralty, enclosing minutes of the Council of Dominica condemning Stewart's actions.24

22 Adm. 2/1062, 521, 523.


24 Clark to Stephens, August 8, 1785, Adm. 1/3820; Lords Commissioner to Stewart, December 3, 1789; and Lords Commissioner to Governor Orde, December 4, 1789, Adm. 2/1062, 521, 523.
In 1797, James Marriott, the Judge of the High Court of Admiralty established the principle that the officers of the Vice Admiralty Courts were not appointed for life or even du se bene gesserint (as he himself was both by his patent and by the Bill of Rights) but removable at the Royal Pleasure, which meant in practice that the Lords Commissioner of the Admiralty had the sole power to displace them.  

By 1805, the Advocate of the Admiralty was able to assert in the case of Governor Beckwith's appointment of Judge Ottley in St. Vincent that this could only be temporary, since Judges were properly appointed only by the Admiralty and Governors merely had powers to fill up vacancies pro tem.

After the turn of the century, Governors' appointments were often turned down or superseded, and appointments were made by the Admiralty without consultation with the colonies. In September, 1803, the Lords Commissioner of the Admiralty turned down the recommendation by the Governor of Barbados of a person to be the island's Vice Admiralty Judge because they had already appointed someone else, while at the same time disallowing the Governor's appointment of a King's Proctor, "judging such an Appointment in many respects objectionable." In the following year, Governor Lord Balcarres of Jamaica wrote angrily to the Admiralty on behalf of George Cuthbert whom he had appointed Vice Admiralty Judge

25 Marriott to Evan Nepean, May, 1797, Adm. 1/3892.

26 J. Nicholl to E. Cooke, August 20, 1805, Adm. 1/4200.

27 Lords Commissioner to Governor of Barbados, September 29, 1803, Adm. 2/1070, 127.
but who had been superceded "to provide for a Gentleman who, it appears, had sufficient interest with the Board to induce such an unprecedented act." The Secretary of the Admiralty replied conciliatingly to Balcarres to explain that on becoming First Lord, the Earl St. Vincent had "desired Sir Will. Scott to recommend the persons whom he should judge to be the fittest for filling the situations in the several Vice Admiralty Courts abroad, & that in consequence of his recommendation Mr. Holland was appt'd to that of Jamaica."28

It would probably not be an exaggeration to say, therefore, that within two generations the patronage of normal Vice Admiralty Court appointments shifted practically from colonial Governors to the Lords Commissioner of the Admiralty, and from them to the High Court of Admiralty, or at least to its Judge. By August, 1808, the Secretary of the Admiralty, was having to write to Sir William Scott to acknowledge receipt of his complaint that Governor Cameron of the Bahamas had overturned Judge Dyer's appointment of a Deputy Register, and to inform him that the Admiralty Lords had requested Lord Castlereagh himself to order Governor Cameron to desist.29

28Balcarres to William Marsden, March 14, 1804, dateline London, and footnote by Marsden, March 15, 1804; Sir William Scott to St. Vincent, April 3, 1804, Adm. 1/3896. What the Secretary did not mention was that Holland had been all ready to go out to be Vice Admiralty Judge at the Cape of Good Hope when it was given back to the Dutch.

29Lords Commissioner to Sir William Scott, August 20, 1808, Adm. 2/1073, 459. See also, Scott to William Marsden, July 6, 1806, Adm. 1/3898.
The growing influence of Sir William Scott was not evidence simply of bureaucratic empire-building but of the campaign spearheaded by that great judge to stamp out absenteeism and amateurism, and bring the Vice Admiralty Courts more firmly under the control of the High Court. The installation of salaried Judges in the major Vice Admiralty Courts in 1804 was part of this process,\textsuperscript{30} and it is significant that Judge Dyer, who was one of the new Judges, objected to Governor Cameron's choice of Thomas Matthews as Deputy Register of the Bahaman Court because Matthews was an absentee. In Dyer's opinion, strongly backed up by Sir William Scott, it was absolutely necessary to have a zealous, able man who had a good rapport with the Judge in such an important post. Who, asked Dyer, was better able to decide on the fitness of such a person than the Judge himself? He was not trying to increase patronage, he claimed, but merely concerned that a man "of the highest integrity, industry and accuracy" be appointed.\textsuperscript{31}

In the early 1790's it was possible for a Vice Admiralty Judge to be absent for three years without trace, and without a Surrogate, before the Admiralty was moved to authorise a successor.\textsuperscript{32} After Sir William Scott came into office, Judges were expected to spend their whole time

\textsuperscript{30}See below, IX, 308-9.

\textsuperscript{31}Henry M. Dyer to W.W. Pole, December 31, 1807, Adm. 1/3898.

\textsuperscript{32}Governor Hamilton of Bermuda had given Judge John Cazneau leave to go to Boston in July, 1789, and by April 1792 had heard no word of him at all. The Lords Commissioner approved the appointment of John Green in Cazneau's place in February, 1793. John King to Stephens, January 30, 1792; Hamilton to Lord Grenville, April 20, 1792, Adm. 1/4156.
in their administrations, and even obtain approval if they wished to go on leave. The other officials were likewise kept firmly up to the mark. Various Acts were passed against sinecurists, though it was invariably held that these did not apply to current holders. But if sinecurists could not be eradicated, they could at least be forced to appoint efficient deputies. In September, 1804, for example, Sir William Scott wrote sharply to the Secretary of the Admiralty concerning Anthony Molloy, the absentee Register of the Vice Admiralty Court of the Leewards: "...their Lordships as Guardians & Trustees for the Public Interests in these matters are called upon to see that the actual execution is delegated to proper Persons & upon proper Conditions, and that it should not be entirely left to the Individual (who is himself generally unacquainted with the nature of the Duties) to pick up, on the cheapest terms, any... in the West Indies who will bid for it, though entirely unacquainted with Admiralty Practice. The reform of these Courts will be in vain looked for, if this Practice is permitted."33

In the same year, Sir William Scott wrote in similar vein concerning the scandalous state of affairs in the Registry of the Jamaican Court. The holder, Ouseley Rowley, lived in England and had deputed his office to John Pedley, who had in turn sub-delegated it to a Mr. Talmage, who

33 Scott to Marsden, September 17, 1804, Adm. 1/3896; Lords Commissioner to Captain Molloy, February 24, 1804, and October 3, 1804, Adm. 2/1071, 3, 7.
was said to be "perfectly incompetent" and extortionate, and disobedient to the Judge. The Judge of the High Court disclaimed an interest in extending his private patronage; he merely craved the appointment of the best men. As far as Registers were concerned, if sinecurists were to be allowed, they should be forced to appoint qualified deputies, who would submit to the Judges' orders in reference to fees until a general schedule was drawn up and imposed. Sir William Scott concluded with the observation that since all Vice Admiralty Court offices were held "in pleasure" and were not patent offices for life it ought to be perfectly easy to submit the office-holders to reform. 34

Between 1805 and 1815, the High Court of Admiralty appears to have imposed remarkably strict discipline upon Vice Admiralty officials in the colonies, chiefly through stricter control of the Judges, who in turn were granted more power within their jurisdictions. Not only had the Governors lost almost all control over appointments and resignations; it had become the practice for Judges humbly to beg the High Court through the Admiralty for retirement, or even leave. An opinion of the Advocate General in 1808 held that Judges of the Vice Admiralty Courts were by their Commissions completely independent of colonial Governors both as concerned their absence and the appointment of deputies. Governors might detain Judges only for extraordinary reasons, since Vice Admiralty officials were accountable to the Admiralty alone, though Governors were quite free

34 Scott to St. Vincent, April 3, 1804, ibid.
to make remonstrances to the Vice Admiralty Judge himself, the Admiralty or even the Secretary of State.\textsuperscript{35}

As early as 1797, Edward Long had requested permission of the Admiralty to retire on account of ill health,\textsuperscript{36} but the institution of pensions between 1801 and 1809\textsuperscript{37} made Judges even more eager to round off their careers in good standing. By the end of the Napoleonic War, a proper form had been established for Vice Admiralty Court Judges wishing to leave their administrations. Judge Hinchliffe, for example, reported to the Admiralty from London, in July, 1812, that he had been forced by sickness to leave Jamaica after eleven years in the tropics, but despite the enclosure of a certificate from Lieutenant Governor Morrison, he was closely quizzed by Sir William Scott before his leave was approved.\textsuperscript{38}

Two years later, Sir William Scott criticised an application for leave by Judge Robertson of Tortola on the grounds that he should have applied before leaving Tortola, enclosing a medical certificate and providing details of his Surrogate.\textsuperscript{39} Judge Compton of Barbados in 1814 requested

\textsuperscript{35}Lord Caledon to Lord Castlereagh, December 15, 1807, with opinion of Sir John Nichool, P.R.O. 30/42, 16/11.

\textsuperscript{36}Evan Nepean to Long, October 2, 1797, Adm. 2/1066, 125.

\textsuperscript{37}By the Acts of 41 Geo. III c. 96 and 43 Geo. III c. 160, and the Order-in-Council of November 8, 1809, granting a salary and pension to the Judge at Barbados. See J.W. Compton to Lords Commissioner, August 10, 1815, Adm. 1/3903.

\textsuperscript{38}Hinchliffe to J.W. Croker, July 2, 1812, inscribed (July 3) "Refer to Sir W. Scott to know if he has any objection"; Hinchliffe to Croker, July 8, 1812, mentioning that he had been bedridden four times in the previous five years and had appointed an excellent Surrogate, and inscribed (July 9) "Send to Sir W S and see if he is satisfied"; Scott to Croker, July 10, 1812, Adm. 1/3900. Also, Adm. 2/1076, 307; 1077, 142.

\textsuperscript{39}Scott to Lords Commissioner, October 10, 1814; Robertson to Lords Commissioner, October 17, 1814, Adm. 1/3902.
leave in England after seven years' hard work in the field, or permission
to resign if that were not acceptable. His request for leave was turned
down, but since he had left very little work in Barbados and there was
an adequate locum tenens, he was graciously allowed to resign. After
further correspondence, he obtained a pension under the Act of 1801.40
The end of the War in 1815 quite naturally produced a spate of similar
requests for leave, resignation, and pension, all of which had to go
through the fine wire mesh of the indefatigable Sir William Scott
before they were approved.41

As a result of the successful campaign carried out by the
High Court of Admiralty to bring Vice Admiralty Court officials more
firmly under its control a considerable improvement in the quality of
Vice Admiralty personnel should have been inevitable, at least from 1801
when salaries and pensions for Judges were introduced, to 1815. But what
does the evidence indicate about the officials as a class during the
whole of the period from 1763 to 1815?

The profits of the West Indian Vice Admiralty Courts were too
sporadic, and the reputation of the West Indies as a graveyard of
"unseasoned" foreigners too grim to attract the most highly qualified
personnel from abroad.42 Besides, nearly all the more lucrative posts,

40 Compton to Croker, November 7, 1813, Adm. 1/3911, Adm. 2/1078,
409, 561, 623; Compton to Lords Commissioner, August 10, 1815; Scott to
Lords Commissioner, August 30, 1815; Croker to John Barrow, December 8,
1815, Adm. 1/3903.

41 See for examples, Adm. 2/1078, 309, 330, 409, 561, 478, 584,
623, 628, 650.

42 "...The Extreme Disinclination of Gentlemen of Education to
quit their own Country and their professional Prospects at Home and to
encounter the Risques & Inconvenience of removing themselves and Families
to remote and unhealthy Settlements, causes obstacles that can only be
removed by the Temptation of Emoluments that appear disproportionate to the
duties of the office...", Sir William Scott to Lords Commissioner,
February 5, 1809, Adm. 1/3899.
in true eighteenth century style, were regarded as perquisites for well-connected sinecure-seekers in England, so that the profits for deputies serving on the spot were further reduced. West Indian Vice Admiralty posts were not even attractive to the most able and ambitious members of the "creole" plantocracy who, like Edward Long, preferred to absent themselves and get closer to the metropolitan sources of wealth, influence, and power. At best the West Indian Courts were places to gain experience that might be more valuable when applied to the metropolis. James Stephen, for example, was glad to take advantage of an uncle's West India fortune to study for the Bar, and found his experience as Proctor in the Vice Admiralty Court of St. Kitt's between 1783 and 1794 invaluable in his distinguished later career, part of it concerned with the regulation of colonial commerce.43

Although at an earlier stage optimistic Governors had imported qualified Judges from abroad,44 the personnel of West Indian Vice Admiralty Courts during the eighteenth century was almost invariably local. Indeed, local experience, standing, and connections were often


44 For example, Governor Woodes Rogers appears to have brought practically a complete Administration with him to the Bahamas in 1718; Craton, Bahamas, op.cit., 104. Likewise, Jamaica under Lord Windsor in 1662 enjoyed the services as its first Vice Admiralty Judge the last Doctor of Civil Law, William Michell, to hold that post for 140 years. See above, 1, 28.
regarded as positive advantages. Governor Clarke of Jamaica in recommending G.C. Ricketts for the vacant post of Advocate General in 1785 mentioned that Ricketts was "a Member of the Assembly and native of this island", who besides being "a Gentleman of high reputation at the Bar, of great integrity", was also "extensively connected in the country, and will, in my opinion, add credit and dignity to the appointment." Again, in 1801, President Joseph Robley of Tobago, in recommending a temporary successor to the absent Judge of the Vice Admiralty Court, praised Charles Wightman as not only "a gentleman of abilities and much experience", but one "who has for some time past enjoyed considerable Property here."

Specialised legal experience was a precious commodity in the West Indies where, if common lawyers were numerous, civil lawyers were practically unknown. In 1700, the metropolitan authorities had been asked to send out to the colonies an "Ould and Judicious Attorney, well practised in the customs and methods of Doctor's Commons that might advise in the proceedings of the Admiralty Court...since the gentlemen concern'd freely acknowledge their unacquaintance in the Civil Law, and with the practice of that Court". As late as 1789, William Wyly, a Loyalist who became Advocate of the Bahamas Vice Admiralty Court, wrote

45 Clarke to Stephens, August 8, 1785, Adm. 1/3820.

46 John Sullivan to Evan Nepean, November 11, 1801, enclosing a letter of Robley to Lord Portland, July 16, 1801, Adm. 1/4188.

47 C.S.P. Col., 1700, 724, quoted in Towle, Rhode Island, op.cit., 91.
that "the present Judge is a most ignorant Quack Doctor, and was formerly Master of a Guinea Ship." Wylly went on to recommend that a lawyer be appointed, "as the Judge of this Court is generally ignorant of any Law at all, and master of no principles, by which to direct his interpretation of the ambiguous clauses of seemingly jarring statutes. . . it is easy to conceive how frequently he must be lost in the Mazes of the Law and left to grope his way without a thread to guide him--his safest course then is that which chance may point--the cast of a Dye, or of a Halfpenny."

The situation in the Bahamas, if exaggerated by William Wylly, was by no means exceptional. In 1793 an applicant for the post of Procurator General of the Leewards could write "that in all of the Leeward Islands, and, as Your Memorialist is informed and believes in all the West India Islands, every person duly qualified to practice the law in the common Law Courts, is also, of course, admitted to practice in the Courts of Admiralty; there being no distinct profession or business of Advocates or Proctors for the Court of Admiralty; nor could such distinct profession or business afford to any person a subsistence, except perhaps in time of War, if he were employed to prosecute many prizes."

Obviously, local candidates with experience in the lower ranks

48 William Wylly, A Short Account of the Bahama Islands; Their Climate, Productions, &c. To which are added Some Strictures upon their relative and Political Situation, the Defects of their present Government, &c. &c., London, 1789.

49 John Burke to Sir John Laforey, 1793, Adm. 1/3889.
of the Vice Admiralty Courts were often chosen to fill vacancies, but promotions outside a colony and transfers of any kind were uncommon. No Vice Admiralty Court officials made the imperceptible but steady progress up the official ladder of success from one colony to another that for colonial Governors was almost a matter of course. The promotion of William Wyly from Advocate of the Bahamas to Judge of St. Vincent, and of R.H. Losack from Judge of St. Kitt's to Lieutenant Governor of the Leewards were almost exceptions that proved the rule. The American War of Independence provided a few displaced Loyalists such as Andrew Cazneau, appointed Judge at Bermuda in 1780, and William Wyly, who went to the Bahamas in 1783; and Dr. William Spry was made Governor of Barbados in 1769 when it was apparent that his Supreme Court of Admiralty for all of North America at Halifax was a failure; but generally, Vice Admiralty officials once appointed, provided they were reasonably unobjectionable, were in a permanent niche.\footnote{Thompson to Knox, 1780, Adm. 1/3886; Adm. 51/13(L); Ubbelohde, Vice Admiralty Courts, op.cit., 130.}

Once established, West Indian Vice Admiralty Court officials had the security of tenure that comes from irreplacability, and their longevity was remarkable. Of the 63 Judges who presided in the 17 Courts of the West Indies between 1763 and 1815, at least twelve died in office, ten resigned and seven were sacked. Yet the 38 of whom the length of tenure is known, totalled 378 years, or an average of 9.95 years, in
office. Of these, only Edward Long was a persistent absentee, and even his 37 years of nominal office were exceeded by the 39 years of Edward Byam in Antigua, and rivalled by the 32 years of James Fahie in St. Kitt's. Other long tenures were the 25 years of John Matson in Dominica, the 22 years of George Leonard in Tortola and the troublesome 20 years of Nathanial Weekes in Barbados. 51

Officials of the West Indian Vice Admiralty Courts were the best men who could be persuaded to serve; the most experienced, the most respectable, the most substantial. These were the qualities most advertised in petitions and recommendations for appointment. Obviously, long experience in the Vice Admiralty Courts, such as the 21 years as Deputy Register claimed by Mark French in applying for the official post at Tortola in 1814, was second only to a training in Doctors' Commons; but, failing intimate knowledge of Admiralty practice, extensive general legal experience was regarded almost as sufficient, even for the posts of Judge and Advocate. John Maynard, candidate for Judge in Barbados in 1763, had been a barrister-at-law for 20 years and Advocate General since 1755; but John Stone, who was proposed as his successor in the Advocacy was simply said to be "a Lawyer of Eminence and Abilities". John Burke, who applied for the post of Procurator General in the Leewards in 1793 had been Solicitor General for eight years, had pleaded in the Vice Admiralty Court throughout the American War of Independence, and had been in general legal practice for 25 years. William Turnbull, proposed as Judge by Robert Dougan the Agent of the Virgin Islands in 1799,

51 Information from Adm. 51/12-16 and references in records passim. See Appendix G, 369.
had been President of the Council during which he presided in the Court of Grand Sessions, had once acted as Surrogate in a case in which Judge Leonard had an interest, and was one of the two framers of the code of laws for the islands.\textsuperscript{52}

Other candidates had fewer obvious qualifications. All that Governor Spry of Barbados could say for Thomas Miller, whom he had appointed acting Judge in 1769, was that he was "a very proper person"; and Governor Hamilton of Bermuda could say no more for John Green in 1792 in proposing him as permanent Judge than that he had acted as Surrogate for three years and had, he believed, "the Qualifications necessary for the performance of the duties of that post with integrity, impartiality and ability."\textsuperscript{53} Too often, the High Court of Admiralty suspected, the "Qualifications necessary" for a Governor's nomination included unswerving fidelity to the Governor himself, if not to the interests of the islanders in general. The paper qualifications of Judge Samuel Gambier in the eyes of Governor Browne and the majority of Bahamian merchants in 1780 were probably irrelevant, and the "good connections" of Advocate George Ricketts of Jamaica, Member of the Assembly, were probably scarcely offset in the eyes of the Admiralty by the "high repute of the Bar", integrity and dignity praised by Governor Clarke in 1785.\textsuperscript{54}

\textsuperscript{52}Petition of M.D. French, Adm. 1/3902; Governor Pinfold to John Cleveland, Adm. 1/3819; Burke to Laforey, 1793, Adm. 1/3889; Dougan to Evan Nepean, July 11, 1799, Adm. 1/3894.

\textsuperscript{53}Spry to Stephens, May 27, 1769, Adm. 1/3884; Hamilton to Lord Grenville, April 20, 1792, Adm. 1/4156.

\textsuperscript{54}See above, 76, 84.
The institution of salaries of £2,000 and pensions of £1,000 a year for six Judges after 1801 guaranteed both a higher calibre of official and a greater independence of local interests. Yet with many of the posts of Register and Marshal still held by absentee sinecurists, it is likely that this improvement was more apparent in the Judgeships than in the lesser posts. After 1804, almost all the West Indian Vice Admiralty Judges were Doctors of Civil Law, but there does not appear to have been a parallel rise in the standards of colonial Registers, Marshals and Advocates. Nevertheless the standardisation of the Judgeships was accompanied by an increase in the Judge's authority, the most important manifestation of which was the power to appoint deputies without reference to colonial Governors.55 Wielding such patronage, and depending themselves upon the High Court of Admiralty both as the source of their authority and as a model for emulation, colonial Judges were unlikely to brook any serious departures from the rules of conduct laid down by the august Sir William Scott.56 Yet, even Judge Henry Hinchliffe, son of the famous Bishop of Peterborough and codifier of the practice of the Jamaican Court, owed his appointment partly to his friendship with Governor Nugent and to the fact that he had already been in Jamaica for three years. Moreover, his survival for eleven years in office was due to an ability to turn the occasional blind eye to the type

55See above, 80, and Caledon to Castlereagh, December 15, 1807, P.R.O. 30/42, 16/11.

56See, for example, the foreword to Hinchliffe's Rules, op.cit.
of minor malfunction and malfeasance in the lower reaches of the Jamaica Court that had helped to bring his predecessor, John Holland, through exasperation and despair, to an early grave.57

In the old, unregulated days, when Vice Admiralty Courts were not regarded as important in the metropolis and patronage remained largely in the hands of colonial Governors, Vice Admiralty Judges and the other officials of the Courts could occasionally expect to make great profits. In a period and an area where life was hazardous and transitory, this was their only hope of an affluent future. After 1801 or 1804, when the patronage and control of colonial Vice Admiralties had passed through the Admiralty into the hands of the comparatively progressive High Court of Admiralty, Vice Admiralty Judges could not expect ever to make great fortunes, or for that matter to achieve much further professional advance, but merely to enjoy a decent competence and a comfortable retirement. For the other officials, many of them deputies, the rewards and prospects were commonly less. Consequently, colonial societies could not expect the officials of their Vice Admiralty Courts to be of much higher calibre at the end of the Napoleonic than they had been at the end of the Seven Years' War. What they hoped for was merely an efficient, a respectably impartial and reasonably inexpensive Court, and this, by 1815, they probably received.

57 Scott to St. Vincent, April 3, 1804, concerning the enormous fees complained of by Judge Holland. The 1812 Report on Vice Admiralty Court fees reported that Holland's efforts had been ineffectual, and that Hinchliffe, while he had made some reforms, still allowed a considerable degree of laxity, Adm. 1/3900. See also D.N.B. under "Hinchliffe", and Frank Cundall (ed.) Lady Nugent's Journal: Jamaica One Hundred and Thirty-Eight Years Ago, Kingston, Institute of Jamaica, 3rd. Ed., 1939, 250.
Chapter Four: The Law and its Application

An apparent contradiction complicated the operation of Admiralty Courts: as Sir William Scott stated in 1807, they were courts predominantly employing "the law of nations though sitting under the authority of the King of Great Britain". ¹ This paradox explains both the independence of the courts in most judicial respects, and the clear distinction made between the various types of jurisdiction. Ordinary Instance cases were adjudicated solely under the Law of Nations and were barely susceptible to national law at all: infringements of the Navigation Acts, on the other hand, were triable in Vice Admiralty Courts by clauses of the Acts themselves, almost the most nationalistic of all legislation. Prize cases came somewhere in between these two extremes; said to be subject solely to the international laws of contraband and blockade as modified by treaties, they were adjudicated in courts that were closely under the control of one nation, by a law that had a tendency to be completely accepted only by that nation.

General Admiralty jurisdiction—the right to try ordinary maritime cases arising out of adjacent areas of the sea—was always regarded as one of the attributes of sovereignty. The High Court of Admiralty was

erected by the King in his function of Admiral, and colonial Governors in their Admiralty Commissions were deputed by the Crown to erect Vice Admiralty Courts for cases emanating from the salt water areas adjacent to—or in the West Indies, usually surrounding—their colonies. Colonial Governors were empowered, and enjoined, to enforce maritime justice: to punish maritime misdemeanours, to satisfy all complaints relating to maritime contracts, to compel appearances and carry out punishments, and to be responsible in general for keeping the waterways clear, and free of disputes and infractions of the peace.2 Yet, despite his solemn duties, couched in impressive legal jargon, the colonial Governor did not preside in the Admiralty Court any more than did the King in the High Court of Admiralty. Although the Governor could keep some check upon judicial misdemeanours, his chief function was to provide sanction and authority for the Judge, who was normally to be unhampered in his interpretation of the law. Likewise, the Governor's Admiralty jurisdiction was always limited by the clauses "Saving always the right of our High Court of Admiralty of England... and saving to every one who shall be wronged or grieved by any definitive sentence or interlocutory decree, which shall be given in the Vice Admiralty Court of our Province... the right of appealing to our... High Court of Admiralty of England."3

2A typical Governor's Admiralty Commission (1783), from Anthony Stokes, A View of the Constitution of the British Colonies in North America and the West Indies at the time of the Civil War broke out on the Continent of America, privately printed, 1783, is in Appendix G,

3Ibid.
The Governor's Admiralty Commission was therefore a fairly empty instrument, that became emptier when he lost the Vice Admiralty patronage during the eighteenth century. His was the vague responsibility for the successful operation of the Vice Admiralty Courts and for the collection of the royal rights of Admiralty; his judicial powers were delegated to the "Judge and Commissary" by a subordinate Commission. In fact, although the Governor temporarily empowered the Judge with his own commission, the ultimate authority resided in a Judge's Commission issuing from the same chancery as that of the Governor, which echoed to a remarkable degree the same sonorous clauses. The Judge was to "take cognizance, proceed and adjudicate" in all cases "civil and maritime", especially concerning complaints, contracts and suits "done or to be done as well in upon or by the Sea, or Public Streams, fresh Water, ports, Rivers, Creeks, and places overflowed whatsoever within the ebbing and flowing of the Sea or High Water Mark as upon any of the Shores or Banks adjoining to them. . . .according to the Civil and Maritime Laws and Customs of the High Court of Admiralty." He was to take evidence, oaths, and stipulations; make enquiries concerning the goods of seaborne felons and the bodies of drowned persons, to prevent mayhem on the waterways and have oversight of all "Engines Toils and Netts", to be responsible for the collection of all royal dues and perquisites of Admiralty; and he had the power to make decrees, to fine and imprison; and to collect the fees of office.

For a Governor's temporary commission or "Fiat", and a Judge's Commission (1804), see Appendix F, 365.

Ibid.
Yet all the judicial powers and duties enumerated in the Commissions to Judges and Governors applied only to ordinary maritime cases. There was no mention of the trial of pirates or of other high seas felons, of special jurisdiction during wartime, nor of the trial of infringements of Acts of Parliament. Piracy trials and the adjudication of prizes during wartime needed specially constituted courts, and even the trial of Navigation Act offences required special instructions to Governors, Customs officials and Judges. Basically, Admiralty Courts were empowered to adjudicate simply such matters involving surveys as Wreck, Salvage, Collision and Damage, contractual disputes over Wages, Charter and Bottomry, "Hypothecation" (Mortgage) and Insurance, and such non-felonious misdemeanours on the high seas as Assault and Riot.  

6 In the West Indies, cases of Wreck and Salvage were all too common, Wages disputes were second in importance and cases of Assault and Riot were not unknown in the Vice Admiralty Courts; but contracts were usually made, and more easily settled, in the metropolitan centres, and contractual disputes rarely came for adjudication to West Indian Vice Admiralty Courts.

The law applied to ordinary Instance cases was the Law of Nations


7The most accessible ordinary Instance cases from the West Indies are in the records of the short-lived Instance Court of Guadeloupe (1811-14), H.C.A. 49/57.
as modified by precedent. Colonial Judges relied upon a few standard texts such as Grotius, Vattel, Bynkershoek and Magens, and a rough-and-ready pragmatism that but for the expense would doubtless have led to many more appeals. Richard Pares could find only two West Indian Judges in the period before 1763 who seemed "to have consulted the precedents of their own or any other Admiralty Courts", and stated that most relied upon "a few tags of Bynkershoek"; and Anthony Stokes, writing in 1783, stated that he had traced no printed colonial precedents and only about ten printed colonial forms in all the English law books.

Conditions improved as the "Laws and Customs of the High Court of Admiralty" became better known in the colonies. Clerk's Praxis Admiralitatis became a standard work, and the decisions of the High Court, printed and circulated more generally after 1798, became more often quoted. Moreover, the Opinions of the Law Officers of the Crown were more often asked for from the colonies and sent out to them.

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8 Edwards, op.cit., specifies "the Civil Law, the Laws of Oleron and the Custom of the Admiralty as modified by statute", though in the last at least he probably included jurisdiction under the Acts of Trade and Revenue.


11 Stokes, op.cit., 277.


13 An early example is enclosed in Lord Hillsborough to Lord Sandwich, January 28, 1780, Adm. 1/4141.
Nonetheless, ordinary Instance cases were the poorest offspring of the Admiralty jurisdiction. But if cases were few, decisions were generally accepted. Expense decreed that litigants went to the common law courts whenever possible, and opposition from the Vice Admiralty Courts was weak because the rewards of ordinary Instance business were almost invariably meagre. Disputes over jurisdiction were, consequently, few.\textsuperscript{14}

The delimitation of jurisdiction—the definition, for example, of what was meant by "places overflowed whatsoever within the ebbing and flowing of the Sea"—had been settled long before 1763,\textsuperscript{15} and the few examples of West Indian common law writs of Prohibition, denying jurisdiction to the Vice Admiralty Courts, were limited to the more contentious and profitable Navigation Act infringement cases.\textsuperscript{16} Similarly, the inevitable disputes over Admiralty Droits—whether they were the perquisites of Vice Admiralty Court or Governor as Vice Admiral—were limited to wartime, when vessels captured by uncommissioned privateers and prizes deemed recaptures were far more numerous and lucrative than the casual peacetime Admiralty perquisites of Salvage, Flotsam and Jetsam, and Royal Fish.\textsuperscript{17}

\textsuperscript{14}One exception related to the death under suspicious circumstances of Henry Sinclair in H.M.S. Valiant, anchored off Greenwich, Jamaica, in 1764; Adm. 2/1057, 159. For an example of an arguably maritime case tried in a common law court, see Thomas Howard to Richard Harper, December 5, 1785, Adm. 1/3888.

\textsuperscript{15}See, for example, the case of the St. George (1675-6), above, I, 33, n. 101.

\textsuperscript{16}Pares, Colonial Blockade, 79.

\textsuperscript{17}All 19 of the disputes over Admiralty Droits arising in the West Indies between 1763 and 1815 traced in the Admiralty papers at the P.R.O., date from the years of war. See, for example, the long memorandum by William Battine, February 11, 1801, Adm. 1/3898.
With the incorporation of the trial of infringements of Acts of Parliament, many new elements entered Admiralty jurisdiction. Statutes were added to the Law of Nations and precedent as ingredients of Admiralty Law; but Acts of Parliament could not easily change the Courts themselves, nor directly influence the Judges. Outside the Courts, however, a whole new structure was brought into being, strongly affecting Governors, the Customs service and the Royal Navy, all of them amenable to statute. Besides this, the involvement of Parliament in drafting Acts that were triable in Vice Admiralty Courts increased the concern of the metropolitan Government in the actual operation of the law. Vice Admiralty Courts were chosen as tribunals for convenience's sake, but then it was the interest of the authorities to ensure, in whatever way they could, that the Courts operated effectively.

The assertion of statute law as a valid basis for Admiralty jurisdiction was an extension of the contention that Admiralty jurisdiction was one of the prerogatives of sovereignty, and that British Admiralty Courts sat "under the authority of the King of Great Britain", much as did Parliament itself. Yet Acts of the British Parliament, and concomitant Orders-in-Council, were binding only on British subjects, so the addition of trials of infringements of specific Acts was as much a division as an extension of the operation of Vice Admiralty Courts. Governors' and Vice Admiralty Judges' Commissions were not altered to include jurisdiction under the Acts. Governors were merely given additional "Trade Instructions", bonded, and made to swear oaths to uphold the Navigation Acts, both in their Instructions and in the
clauses of the Acts themselves.\textsuperscript{18} Judges were expected to try offences against specific Acts brought before them, presumably, in keeping with the clause in their Commissions binding them to "the Laws and Customs of the High Court of Admiralty", or the general injunction to adjudicate all valid maritime causes brought before their Courts.\textsuperscript{19} In this sense, Acts of Parliament were simply statements of national law that included instructions to executive officers to carry infringers to the most convenient courts; Vice Admiralty Courts were competent to judge such cases, by whatever criteria were valid and relevant, not as national tribunals, but as general tribunals to try all maritime cases. In theory, if not in practice, a British Vice Admiralty Court was quite competent to judge a foreigner on the grounds of the infringement of the Navigation Acts of his own mother country.\textsuperscript{20}

Despite their comparative independence of parliamentary enactment, which partly explains their later resistance to statutory reform, the Vice Admiralty Courts did become an essential part of the machinery for the enforcement of the Mercantile System. Governors by their Trade Instructions were responsible for establishing whether vessels visiting their colony were British built, British manned, and correctly registered, entered and cleared, were charged with the oversight of the

\textsuperscript{18} Particularly in the Acts of 12 Car. II, c. 18, f.2; 15 Car. II, c.7 f.8, 7-8 Will. III, c.22 f.4; 8-9 Will. III, c.20 f.69; 4 Geo. III, c.15 f.39. Stokes, \textit{op.cit.}, 176-85. The bond was for \$\1,000; Beer, \textit{Old Colonial System}, 264-72.

\textsuperscript{19} Appendix H, 371.

\textsuperscript{20} See, for example, the Opinions of Jenkins, Exton and Lloyd on the case of Captain Cook (1677) in George Chalmers, \textit{Opinions of Eminent Lawyers on various points of English Jurisprudence chiefly concerning the colonies, fisheries and commerce of Great Britain collected and digested from the originals in the Board of Trade and other depositories}, London, 1814, 232 sqq.
bonds of shipmasters concerning the carriage of enumerated goods, and were
instructed to send to the Board of Trade lists of vessels and cargoes
entered and cleared, and of bonds issued and cancelled. 21 This work
was carried out in practice by the Naval Officer, originally one of the
Governor's chief appointees but by the middle of the eighteenth century
a patentee appointed and controlled from London and practically an
officer of His Majesty's Customs. 22 Customs officers, under the command
of the Collector and Comptroller in each colony, were held directly
responsible by the various Navigation Acts for checking on the observance
of the Acts and were enjoined to inform upon infringers and prosecute
them in the nearest Vice Admiralty Court qui tam, or on behalf of the
King. 23

The involvement of Vice Admiralty Courts in the enforcement of
the Mercantile System was coeval with the Navigation Acts of the reigns
of Charles II and William III, which constituted what one commentator
called the "fundamental Laws...of the great System of our Commercial
Regulations"—24 the comprehensive Act of 1696, in fact, was

21 Labaree, Royal Government, 120 sqq.; Beer, Old Colonial System,
264-72.

22 Gilbert Francklyn to Lord Grenville, December 15, 1790, 4; Grenville

23 C. M. Andrews, Colonial Period, Vol. 4, VII ; L. A. Harper,
Navigation Laws, 177 sqq.

24 "In the 12th, 13th & 14th, 15th & 16th of Charles the 2nd, and the
7th & 8th of William the 3rd will be found the great System of our Commercial
Regulations, for all the Laws which have since been Enacted, relative to Trade
can only be considered as Regulations established upon the Principles of these
fundamental Laws...", Report by Mr. Irving, Inspector General of Imports &
Exports to the Commissioners of the Customs upon a Correspondence refer'd
to him between the Officers of the Navy and the Civil Officers in the West
Indies, 4, Grenville Papers at Boconnoc, uncalendared and undated (1786-90).
accompanied by the first attempts to erect a formal Vice Admiralty system on the colonies—25 but the commercial legislation of 1763 to 1768 went much beyond this point in formalisation.26 At the same time as the imperial authorities were trying to erect supreme Courts of Vice Admiralty for North America,27 generous shares were decreed to enforcing officers in the colonies. Of the proceeds of the condemned goods of infringers after the costs of the prosecution had been deducted, one-third was to go to the informer or seizer, one-third to the Governor or Commander-in-Chief, and one-third to the Collector of Customs "for the use of His Majesty".28 By an Order-in-Council of the same year, Royal Navy captors were entitled to one-half of the proceeds, the other half going to the Collector of Customs.29 It is worth noting that the custody of money and the sharing out in Navigation Act and Revenue cases was in the hands of the colonial Receiver General and not the Register of the Vice Admiralty Court, although in some cases he was one and the same person.

25 See above, I, 33.


27 Ubbelohde, American Revolution, passim, and below, VI.

28 That is, for the use of the officers of the Customs. Attributed by Stokes to the Act of 4 Geo. III, c.15 f.42, though these shares had been allocated as early as the Navigation Act of 1660. Harper, Navigation Laws, 177; Beer, Colonial Policy, 228–302; Dickerson, Navigation Acts, 168-9; Ubbelohde, American Revolution, 45.

29 Order-in-Council of June 1, 1764; Ubbelohde, American Revolution, 42.
The generosity of the Crown to informers, seizers, and captors was reinforced by the institution of the Writ of Probable Cause, whereby the Judge of the Vice Admiralty Court could certify, when seized vessels or cargoes were acquitted, whether the seizers had been justified in their suspicions. If so, the unfortunate defendant was held liable for the costs of his otherwise successful case.\(^{30}\)

The increase in Navigation Act business, to which cases of infringement of the Slave Regulations were added after 1791,\(^{31}\) coupled with the distinction made by the Acts and Orders between land and sea seizures, reopened the question of the delineation of the jurisdiction of Vice Admiralty and common law Courts. This was made more difficult by the clause of the 1764 Act which stated that offences against the Act could be prosecuted in "any Court of Record" in the colonies, besides "any provincial Vice Admiralty Court or any Court of Vice Admiralty established over all America".\(^{32}\) This appeared to have reversed the principle, established between 1696 and 1726,\(^{33}\) that all colonial Navigation Acts should be tried in Vice Admiralty Courts;

\(^{30}\) Act of 4 Geo. III, c.15 f.46, cited by Stokes, \textit{op.cit.}, 360. Probable Cause was, however, far older in prize cases, being mentioned, for example, by Sir George Lee et al. in 1753 as being established by the Law of Nations; Lee-Scott, \textit{op.cit.}, 3-4. A good example of the plea of Probable Cause in a Navigation Act case is the case of the \textit{Rapid} (Guadeloupe, 1811), H.C.A. 49/57, 9.

\(^{31}\) Act of 31 Geo. III, c. The jurisdiction against interlopers mentioned by Andrews had long since passed away, that over the White Pine Laws (1722-9) did not apply to the West Indies, and that under treaties will be considered as part of prize jurisdiction, below, 107-8.

\(^{32}\) Ubbelohde, \textit{American Revolution}, 50.

\(^{33}\) See above, I, 35-6.
but the change was more apparent than actual,\footnote{It was based on the more or less unreal distinction made after 1763 between Navigation and Revenue legislation. Regulatory and revenue legislation often overlapped and it is difficult to consider their enforcement in the Vice Admiralty Courts separately. Beer, Colonial Policy, 252.} for prosecutors almost invariably preferred trial in the jury-less Vice Admiralty Courts. "To try the fact of an information by a Jury", wrote the realist Stokes in 1783, "would be almost equivalent to the repealing the Act of Parliament on which such an information was grounded."\footnote{Stokes, op.cit., 361.}

Interested parties in the colonies did try to repeal or change the relevant acts. In May, 1792 Stephen Fuller, the Agent of Jamaica, forwarded to the Chancellor of the Exchequer a petition from certain "loyal subjects in Jamaica" asking for the removal of the anomaly by which the Acts of 4 Geo. III c.15 and 6 Geo. III c.13 allowed prosecution of Navigation act and Revenue cases in either a colonial Court of Record of Vice Admiralty Court and yet stated that "penalties and forfeitures" could only be recovered in the Courts of Record at Westminster or the Court of Exchequer in Scotland, by granting the entire jurisdiction to colonial Courts of Record. It was specifically suggested by Stephen Fuller that an appropriate section might be incorporated in the "Hotchpotch" Act towards the end of that parliamentary session. This particular attempt to sidetrack Navigation Act and Revenue cases out of the Vice Admiralty Courts failed, but it was typical of the ways in which Navigation and Revenue Acts affecting the Vice Admiralty Courts might be altered in response to demands.\footnote{Fuller to Chancellor of Exchequer, May 26, 1792, P.R.O. 30/8, 349a, 194, 251.}
Generally, however, mercantilist legislation emanated from the metropolis with little or no reference to problems of colonial acceptance or the powers of local enforcement. Besides this, the personnel of the Admiralty Courts could never have a high regard for a web of nationalist legislation so difficult to apply in relation to the Law of Nations, so unpopular in its application with local mercantile interests, and so limited in its rewards. Prize jurisdiction, on the other hand, while strongly affected by Acts of Parliament and Orders-in-Council, was clearly related to recognisable principles of international law, was almost universally popular among British colonials, and was handsome in its rewards. Naturally, therefore, it was prize jurisdiction, particularly during the long wars against the French after 1793, which did most to influence and shape the Vice Admiralty Courts, their relationships both with local and metropolitan interests, and the law that they administered.\footnote{Moreover, many mercantile regulations were relaxed during wartime; the Act of 34 Geo. III, c.68, for example, amended the rules concerning manning and registry.}

It was a generally recognised precept of international law that each belligerent in wartime had the power to set up Prize Courts for the adjudication of enemy prizes. As such, these Courts were evidently temporary, separate, and amenable to statutory regulation. Commissions were issued by the Admiralty on the outbreak of war and revoked on the signing of peace, which created courts that were—at least theoretically—completely distinct from the tribunals for Instance and Revenue cases, and for the trial of pirates. At about the same time, Letters of Marque
and Reprisal were issued through Admiralty Judges to privateers, and these privately-commissioned warriors, along with captains of the Royal Navy, were issued Instructions by the Admiralty, which were periodically revised or augmented. The Prize Courts were regulated by the same acts of Parliament and Orders-in-Council that regulated the privateers and the naval vessels, and by Instructions that accompanied the Prize Commissions to the Judges; but all Acts, Orders, and Instructions were carefully reviewed by the Law Officers of the Crown with the expressed intention of making them consistent with international law. The law applied was said to be "the Law of Nations as modified by Treaties and by Statute": difficulties arose in the interpretation of the Law of Nations and in the degree to which the law was subject to national fiat. Despite the most vigorous denials by the Professional lawyers, the law applied developed on nationalist lines, and tended only to be as effective as the power of enforcement. In such an exercise of realpolitik, belligerents were fair game; what caused most disputes was the application of Admiralty law to neutrals.

The general principles of Prize Law were so well expressed by Sir George Lee and the Law Officers of the Crown in 1753 that Sir William Scott in 1794 could do no better than quote them. These principles were said to be rooted in the Law of Nations as forged in wartime. "In this method", claimed the Law Officers, "all Captures at Sea were try'd, during the last War, by Great Britain, France and Spain, and submitted

38 For example, Cobbett's Parliamentary Debates, Vol. IV, March 20, 1805, 61-5; Sir William Scott to Lords Commissioner, August 13, 1810, Adm. 1/3899.
to by neutral Powers.\textsuperscript{39} In this Method, by Courts of Admiralty acting according to the Law of Nations, and particular Treaties, all Captures at Sea have immemorially been judged of, in every Country of Europe. Any other Method of Trial would be manifestly unjust, absurd and impracticable." When two nations were at war, they had the right to seize as prize the ships and goods of each other, even if the goods were carried in a neutral ship; but not to seize ships and goods known to be neutral, unless the goods were contraband. Before the disposal of ships and goods there had to be a trial, with both parties represented, in "a Court of Admiralty, judging by the Law of Nations and Treaties." The "proper and regular Court" for these trials was an Admiralty Court of the nation to which the captor belonged.

Evidence in prize trials was to be based upon ships' papers and examinations upon oaths of shipmasters and other crew members. It was therefore important that all ships carry full and authentic papers, and that masters be fully privy to the purpose of ships' voyages. If the evidence clearly established neutrality, ships and goods were acquitted; if the facts were obscure, further proof might be demanded. Property not shown to be neutral after every reasonable chance for proof had been allowed, was taken to be enemy property. In the event of a condemnation, each side paid its own costs; but in the event of an acquittal, the successful party might still be liable to pay his own costs if "probable

\textsuperscript{39} That is, between 1739 and 1748, and, since the Law Officers writing in 1793 left it in, presumably between 1756 and 1763, and 1778 and 1783 as well.
cause". Finally, if decisions by Admiralty Courts were thought to be erroneous, there was "in every Maritime Country a superior Court of Review, consisting of the most considerable Persons", to which appeals might be made by either party. The appeal court judged by the same principles which governed the lower courts, "viz. the Law of Nations, and the Treaties subsisting with that neutral Power, whose Subject is a Party before them."

These then were the basic principles of prize law, expounded in such standard international texts as Grotius and Puffendorff, Wheaton on Capture, Hautefeuille, Lampredi and Galliani on Neutrals, or Sir George Lee's own pioneer Prize Cases. It was the refinement and development of the basic principles, particularly in the definitions implied and the methods established by Acts, Orders, Commissions, and Instructions, and their application by Royal Navy captains, privateers, and Vice Admiralty Courts, that difficulties and disputes arose.

The actual machinery of the British prize system was based upon the Prize Acts, which regulated the actions of captors, decreed the allocations of shares for the Royal Navy, and organised—and to a growing extent, controlled—the Prize Courts. Each war saw a renewal and expansion of the acts, but they were all developments of the great Prize, or "American" Act of 1708, formulated by Sir Charles Hedges, which

first regulated the actions of privateers and gave formal being to colonial Prize Courts. 41 Before 1708, prizes were the concern of Prize Offices scattered throughout the colonies, responsible for the custody of seizures but not their adjudication. Although vessels or goods taken beyond Gibraltar did not have to be carried bodily to Great Britain, all prize trials were supposed to be held in the High Court of Admiralty. After 1708, seizures could be taken to the most convenient Admiralty Court commissioned to try prizes. Besides this, the American Act established procedures for the commissioning, bonding and regulating of privateers by Vice Admiralty Judges, the bringing of seizures to court by captors, the custody and payment of proceeds, the charging of fees by Court officials, and the making of appeals to the Lords Commissioner of Prize Appeals.

The most comprehensive of all Prize Acts, passed in June, 1793 after the outbreak of the war with France, 42 merely added detail to the earlier legislation, but many of the additions amounted to more precise regulation of the operation of the Prize Courts: more stringent rules

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41 Act of 6 Anne, c.37, "An Act for the Encouragement of Trade to America". See Cal. Treasury Books, lx, 293-4, cited in Andrews-Towle, Rhode Island, 35-40. The chief later Acts were those of 13 Geo. III, c.4; 17 Geo. II, c.34; 29 Geo. II, c.34; 19 Geo. III, c.67; 33 Geo. III, c.66; and 43 Geo. III, c.160. Clause lxxiv of the 1793 Act decreed that it would continue in being only as long as the war with France continued.

42 Act of 33, Geo. III, c.66, "An Act for the Encouragement of Seamen for the better and more effectually manning his Majesty's Navy".
for privateers, for the authentication and custody of ships' papers, for the organisation of sales and the division of proceeds, a ban on divided interest among the Court officials, and an assertion of the legal status of recaptured vessels and prize vessels in relation to British registry. From simply erecting Courts to service the Royal Navy and privateers, with almost complete independence, the Acts had moved imperceptibly towards controlling the organisation and functions of the Courts, the regulation of specific Court officials, and even a definition of the law itself. This process was carried to its logical conclusion in the string of Acts after 1801 which completely reformed and regulated the Prize Courts and the system of Prize Appeals, salaried the Judges, and instituted a standard scale of fees for all colonial Courts.

After the declaration of a war, Commissions were sent out to the colonies to set up Prize Courts and for the issue of Letters of Marque for privateers. These were accompanied by Instructions, which reiterated in greater detail the provisions of the Prize Acts. The process was complex and variable, but well illustrates the way in which the colonial Prize Courts were always inextricably tied to the imperial government. After making the proclamation of war and reprisals and setting afoot the process for reissuing the Prize Act, the Privy Council was extremely busy in drafting the royal Commissions to


44 Technically, "the King in Council".
the Lords Commissioner of the Admiralty for the Prize Courts and
Letters of Marque, and in passing the Orders-in-Council which authorised
Instructions to Royal Navy vessels, privateers and Prize Court Judges,
as well as the Standing Interrogatories for use in the Courts. On receipt
of their warrants, the Lords Commissioner would send out Commissions
for Prize Courts to colonial Vice Admiralty Judges, along with the
Instructions and Standing Interrogatories, Warrants to colonial Governors
to issue Letters of Marque, and the relevant Instructions to captains of
Royal Navy vessels and to privateers. In addition, the Lords Commissioner
usually sent copies of these naval and privateer Instructions to all
colonial Governors and Prize Court Judges.45

Periodically, during the course of the war, Orders-in-Council
might be passed authorising Additional Instructions to the Royal Navy,
privateers or Prize Courts.46 Commissions were made out against a
specific enemy, and if war were declared against a fresh enemy, new

45 An instructive sequence, relating to the process of erecting prize
machinery against the Americans in 1776, from the order of the Lords
Commissioner to the Solicitor General to solicit the passing of the King's
Commission for the trial of American seizures, down to the actual Commission
sent to the colonial Judges, can be followed in Adm. 2/1058, 486, 490, 492,
497, 499, 500. Letters of Marque were sent out in 1777; Adm. 2/1059, 162.

46 For example, Adm. 2/1068, 527, includes instructions that Privateers
and Vice Admiralty Courts be furnished with the Order-in-Council of May 21,
1801, allowing the import of gold and silver into Jamaica. See also Adm.
2/1059, 169, sending copies of the Act forbidding the carrying of seizures
into the ports of North America (1777). There were at least 27 Additional
Instructions sent out between 1795 and 1808 alone; Adm. 2/1064-1073. These
might provide instructions to extend the scope of seizures, or provide
exemptions in particular cases, such as Adm. 2/1061, 35, 48, which exempted
Dutch vessels in 1781 carrying British cargoes from seizure for six months,
despite the order for general reprisals against the Dutch already issued.
The chief Orders-in-Council are dealt with below, in Chapters VI, VII,
and IX.
Commissions and Instructions were sent out. Normally, Prize Acts, Orders-in-Council and Commissions expired on the signing of peace, but Commissions could be revoked at any time if the imperial authorities willed.

To the cynical it might appear that the imperial government, through the Admiralty, not only commissioned and instructed the captors but the courts which tried their captures as well; not only set up the courts which tried the captures, but also had an important part in passing the laws by which they were tried. This was not entirely so, for at every stage, the authorities took the Opinions of the Law Officers of the Crown, and every attempt was made to make the provisions of Acts, Orders, Commissions, and Instructions consistent with "the Law of Nations and Treaties", and, more specifically, to ensure that the directions to the Prize Courts concentrated on the organisational functions of the Courts, and left them as independent.

For example, the fresh processes upon the outbreak of the war with France in 1778, Adm. 2/1059, 358-62; and with Holland, Stormont to Lords Commissioner, December 20, 1780, Adm. 1/4143; January 1, 1781, Adm. 1/4144.

For example, the Order-in-Council of January 1, 1808, announcing the end of war with Spain, Adm. 2/1073, 420.

For example, the revocation of all Prize Court commissions except those of Jamaica, Martinique and Halifax after the Act of 1801, September 7, 1801, Adm. 2/1069, 71.

The papers of Sir John Nicholl, Advocate General, 1798-1809, P.R.O. 30/42, are particularly full of this type of Opinion. One particularly good example of the Opinions of Advocate General, Attorney General and Solicitor General on the sending of provisions by British subjects in neutral vessels into enemy ports is enclosed in Lord Hillsborough to Lord Sandwich, January 28, 1780, Adm. 1/4141. These Opinions were accompanied by a "sketch" for the Additional Instructions that ought to be issued to Royal Navy vessels and privateers.
In 1805 Sir William Scott, in a debate in the House of Commons, said that the legislature ought to be "extremely tender" of reforming the Admiralty Courts by statute since they were subject to the Law of Nations, which was "no less sacred than the Common Law in establishing the character and honour of each country".\(^5\) Yet, despite the protestations of the lawyers, it is obvious that the assertion of Anthony Stokes in 1783, that "it never was imagined that the property of a foreign subject, taken as a prize on the high seas, could be affected by laws peculiar to England"\(^5\) was very far from the truth when applied to the period of the Maritime war when it was written, and probably became even more so during the subsequent wars. Even when the general principles of inter-national law, the procedures of the Prize Courts and the general probity of the Court officials were accepted—and all were challenged at different times—almost every interpretation of the British Prize Courts was challenged by foreign neutrals as being based upon principles satisfactory only to the British imperium, and being just as flexible as circumstances required.

There were always certain principles which it was in the interest of the neutrals to assert and the belligerents to condemn. The most elementary of these was the contention that belligerent goods carried in a neutral vessel were inviolable upon the principle that "free ships


\(^5\)Stokes, op.cit., 275.
made free goods",\(^{53}\) from which stemmed the reluctance of neutral carriers to allow the principle of stopping and searching on the high seas by belligerent cruisers. Likewise, neutrals maintained an extremely narrow definition of contraband, claiming that it did not include provisions, and of blockade, holding that it had to be effective, not just asserted by proclamation. None of these contentions was accepted by British Prize Courts—which were able to cite sound precedents in international law to support their decisions—unless they were incorporated specifically in valid treaties between Great Britain and the neutral in question.

The provisions of treaties represented a flexibility that was universally recognised in international law. Treaties could suspend or modify the Law of Nations by providing liberal definitions of blockade and contraband, or even allowing the principle of "free ships, free goods", for special "Friends"; or they could include promises not to engage in trade with an enemy of the other signatory. Yet the Law of Nations was modified most by treaties to suit those powers it was least profitable to tangle with. The Dutch were given very special privileges in 1674 and during the American Revolutionary war down to 1779 Dutch neutral carriers were treated carefully because of a recognition of the disadvantages of a renewed Dutch war, just as Jay's Treaty in 1794 was an expression of the reluctance of Great Britain to go to war with the United States.

\(^{53}\) They were generally willing to admit the corollary that "unfree ships make unfree goods", i.e., that neutral goods carried in belligerent vessels were liable to be seized as prize.
Conversely, it was to the interest of the unprivileged neutral powers to obtain rights not enjoyed by treaty by a show of force, a motive that explained the creation of the Armed Neutralities of 1780 and 1800. 

Treaties, almost by definition, were instruments of government policy: yet Admiralty Courts were bound to observe them. Besides, if policy could create treaties, it could also break them. Though Admiralty Courts were bound to try cases by the treaties as well as by the Law of Nations, they could not prevent Government from declaring reprisals against a neutral, or issuing Orders-in-Council and Instructions to its men-of-war to ignore the provisions of a treaty at the risk of provoking war. In fact, it was generally accepted by the British Prize Courts that while treaties were superior to statutes, not only did a declaration of war extinguish treaties, but it was also the duty of the Courts to condemn infringers of Orders-in-Council. It should

54 One of the chief functions of which was to provide armed convoys to discourage stopping and searching by British cruisers.

55 One of the hardest problems that Admiralty lawyers had to solve was deciding which treaties were in force, or still in force. In 1801, for example, Sir William Scott gave his opinion that certain seizures made by H.M.S. Tisiphone were wrongly condemned by the Vice Admiralty Court in Jamaica because of the terms of the Maitland Convention made with Toussaint l'Ouverture in 1798, and that pleas of ignorance and superior orders were disingenuous because the terms of the treaty had been incorporated into Additional Instructions to the Royal Navy and privateers, and captains were bound by treaty provisions even if their Admiral ordered them to make seizures contrary to them; Scott to Lords Commissioner, May 13, 1811 and July 17, 1811, Adm. 1/3899.

56 Pares, Colonial Blockade, 90-1.

57 This particularly arose from the consideration of seizures and condemnations of French vessels trading with American in 1776-8. The question was whether the 1686 Treaty with France had been abrogated by the outbreak of King William's War in 1689, or had been renewed automatically by the treaties of peace in 1697, 1713, 1748, 1763 and 1783. It was resolved, predictably, by a decision that wars extinguished treaties, which consequently required specific renewal.
not then be surprising that neutrals did not often accept even the interpretations by British Prize Courts of the Law of Nations and of treaties if these resulted in condemnations, and were convinced that Prize courts in the Caribbean were simply machines for condemning seizures of neutral vessels by a legal fiction, in line with arbitrary government policies or even unwarranted local seizures.

The most contentious of all principles developed by the British Prize Courts were those relating to the "Rule of 1756", the opposition to the use of "Ports of Convenience" by neutrals and the doctrine of "Continuous Voyage". The development of these principles, never fully accepted by neutral powers, demonstrated conclusively the flexibility of the law applied by British Prize Courts in the Caribbean, and the susceptibility of the law to the dictates of imperial policy.

The Rule of 1756 was the contention "that a neutral has no right to deliver a belligerent from the pressure of his enemy's hostilities, by trading with his colonies in time of war, in a way that was prohibited in time of peace."\(^58\) All Caribbean powers were mercantilist in peacetime, but tended to open their colonial ports to friendly neutrals under the duress of war, so that soon a good proportion of belligerent trade was carried in neutral vessels, with the cargoes temporarily owned by neutrals. Direct trade by neutral carriers between a belligerent colony and its mother country was declared illegal, but ingenious traders countered this by the use of neutral Ports of Convenience for transhipment. This

could only be countered by the rigorous assertion of the Rule of 1756, the extension of the definition of direct trade to include Continuous Voyage, or by the institution of an absolute blockade of belligerent ports.

Richard Pares has shown how the novel application of the Rule of 1756 provoked friction during the Seven Years' War when used to prevent Spanish, Dutch, and Danish trade with the French Caribbean colonies.59 It was applied with even greater vigour in the subsequent war to prevent the supply of the French and Americans by the neutral Dutch and Danes. A cause célèbre concerning the interpretation of the Rule of 1756 arose in Jamaica in 1780, over the right of the Dutch of Curaçao and St. Eustatius to trade with Hispaniola. Between 1779 and 1780 there was a sudden spurt of seizures of Dutch vessels, and the Dutch Governor of Curaçao, J. Rodier, having sent the Governor of Jamaica several ineffectual letters of complaint, sent J.M. Van Starckenborgh, one of his Councillors in person in April, 1780, with a lengthy memorial of protest.60 This document complained of the practical blockade of Curaçao and Aruba since the end of 1779, mostly by privateers, who had stopped all vessels weaker than themselves, sent some to Jamaica, plundered others and even intimidated some "simple captains...to leave them their vessels and their own adventures, provided they would abandon the rest." The memorial went on to request the Governor of Jamaica to make regulations to halt the plunder, to arrange for the immediate release

59Colonial Blockade, 226-309.

60C.O. 137/78, 100 sqq.
of all vessels, cargoes and persons wrongly held, and—crowning insult—to pledge himself personally responsible in case of any further depredations.

Anticipating the British answer referring to the Rule of 1756, Governor Rodier claimed that it was the privilege of the French King to order any relaxation of the mercantile regulations that had formerly been applied in the French colonies. He also pointed out that the Dutch authorities had always been scrupulous in the question of contraband, and had even made the burgher merchants take oaths before sailing that vessels and cargoes were their own and did not belong to any belligerent.

The Governor of Jamaica, John Dalling, had already refused to treat directly with Van Starckenborgh, "as the Dutch are reported not only to take our cruisers, if inferior in strength, but likewise to annoy our trade," but ordered his Secretary, Edward Barry, to negotiate. Barry's method was to obtain a comprehensive answer to the Dutch complaints from the colonial Advocate General, F.C. Lewis, which was drafted on May 16, 1780. Lewis began by pointing out the fact that the Governor had no constitutional right to interfere in the business of the Vice Admiralty Court. The King of Prussia's case had shown that not even the King of England could arbitrarily release seized vessels or cargoes. If the Governor of Curaçao had any complaints to make, he should pursue them in the Prize Courts; and if not satisfied there, should prosecute an appeal.

61 Barry to Lord George Germain, June 26, 1780, ibid., 96.

62 Ibid., 107-15.
In dealing with particular complaints, the Advocate General mentioned that the case of the brig Betsey\(^{63}\) was well under way. A Claim had been entered, a writ issued by the Judge for a Foreign Commission, and Stipulation Bonds taken from the captors to repay the claimants in the event of an acquittal. The cargo had been lodged with the officers appointed under the Prize Act, but was to be handed over to the claimants on the following day upon the giving of sufficient security. In the case of the Rotterdam\(^{64}\) no Claim had yet been entered, and in the question of complaints against a certain Captain Curphey, no charges had yet been levelled in the proper place.

Reaching for the strongest card in his hand, Lewis came last to the complaints against Captain John Jonasz of the privateer Ballahoe.\(^{65}\) The Dutch had complained indignantly that Jonasz had orders from his owners or the government "to capture all Dutchmen with French produce on board"

\(^{63}\) J.V.A. 558, brig Betsey, Master Mitchell, captured by the privateer schooner Lady Parker, Curphey, April 12, 1780. Sailing from Grenada to Curaçao with sugar and cotton, she went on to Aruba. According to the records she was acquitted on May 10, 1780, though if this were so, Lewis's facts were out of date when he wrote on May 16.

\(^{64}\) J.V.A. 559, sloop Rotterdam, de Lisiel, also taken by Curphey in the Lady Parker at Aruba, coming from Aux Cayes with 36 barrels of white sugar, 133 bags of coffee and 14 barrels of indigo, on April 13, 1780. Acquitted July 19, 1780.

\(^{65}\) One of the most successful of the Jamaican privateers, the Ballahoe was owned by Messrs. Campbell and Galbraith of Kingston. Under Jonasz, she captured and libelled successfully two French vessels in 1778 (J.V.A. 236-7), libelled 11 in 1779 (J.V.A. 382-9; 489-91), of which one, the Dutch L'Esperance, Poppe (J.V.A. 389) only was acquitted, and one in 1780.
from every port in Hispaniola, excepting Cape Nicholas Mole, but not to meddle with any Dutchmen bound to Hispaniola", and to capture "all Vessels from the Spanish Main, but not Dutch Men bound there." What could be a clearer exposition of the Law of Nations, asked Lewis. He cited many precedents, but emphasised particularly the Second Article of the Anglo-Dutch Treaty of 1674, which limited neutral trade in wartime "to all Commodities which might be carried in time of peace. . . . It is now I trust Evident", he hammered home, "that the Dutch are not by Treaty or Usage Intitled to any greater or other Traffic than they Exercised in time of Peace; & Cape Nicholas Mole, being the only Port of Hispaniola where trade was permitted to them; to the same Port they must now be Restricted."

Van Starckenborgh petulantly rejected the Advocate General's careful arguments, saying that he had been sent to Governor Dalling not to Lewis, 66 and returned to Curacao in June, 1780, more than ever convinced that the British Government, Governor Dalling, his Advocate General, the Vice Admiralty Court and the "piratical" privateers were hand in glove. Clearly, the Jamaican privateers were both under orders to put pressure on Dutch traders with the French, and confident that the Prize Court in Jamaica would back them up; and though, in fact, both the Betsey and the Rotterdam were eventually acquitted, the official correspondence shows that Governor Dalling advocated that the Government take a far firmer stand with the neutral Dutch traders in the Caribbean. Six months later, Britain and Holland were at war, for the first time in 107 years.

By the time of the next French war in 1793, the Americans were the chief neutral carriers in the Caribbean. Considerations of policy, at least after the wholesale seizures of the first months of the war, decreed that the Rule of 1756 be relaxed, though the doctrine of Continuous Voyage was further asserted and refined.

When the war broke out in April, 1793, the British Government was determined that the trade of the French Caribbean colonies should not be carried in neutral vessels. This involved the effective application of the Rule of 1756 and the rule against direct or continuous voyages between belligerent colonies and their mother countries, which in turn meant the stopping, searching and sending for adjudication of all suspicious neutral vessels. Accordingly, an Order-in-Council was drafted which led to the Instructions of November, 1793 to patrolling vessels of the Royal Navy and privateers "to stop and detain for lawful adjudication, all vessels laden with goods the produce of any French colony, or carrying provisions or other supplies for the use of any such colony."67

The detention of more than 300 American vessels and the condemnation of many by Caribbean Prize Courts on the grounds that they were engaged in a trade that had been denied United States vessels by the French in peacetime, led to a storm of protest from the Americans and a major diplomatic incident. In January, 1794, as part of the conciliatory policy that accompanied the negotiation of Jay's Treaty, the British Government issued Additional Instructions merely to seize "such vessels as were laden with goods the produce of the French West

67Quoted in James Stephen, War in Disguise, 20.
India Islands, and coming directly from any port of the said islands to Europe".68

In other words, the Rule of 1756 was officially relaxed, though the rule against direct voyages continued to be applied. The Americans countered by the subterfuge of breaking their voyage, either at a neutral Port of Convenience such as St. Thomas, or at one of their own Eastern Seaboard ports. This policy was almost condoned by the British Government in the Additional Instructions of January, 1798, which ordered British cruisers to bring in for lawful adjudication only those "vessels laden with the produce of France, Spain or Holland; and coming directly from any port of the said island or settlement to any port in Europe, not being a port of this kingdom, or of the country to which the vessel being neutral, should belong."69

These Instructions were in line with decisions made in the High Court of Admiralty and the Court of Prize Appeals concerning neutral seizures, but it is difficult to see whether policy originated with the Government or the Admiralty Judges, so closely were they in accord. Certainly, however, the policy originated in England, and where Caribbean Prize Courts made decisions contrary to imperial policy, they were quickly brought back into line. For example, in 1801 the Americans complained vigorously both to Lord Grenville by way of the British Chargé d'Affaires in Washington and to Lord Portland through

68 Ibid., 22-3.

69 Ibid., 23.
the American Ambassador, Rufus King, of decrees made by Judge Kelsall of the Nassau Prize Court. Both Portland and Lord Hawkesbury—to whom Grenville forwarded his letter—took the opinion of the Advocate General, who declared that the decrees were erroneous in that they applied the Rule of 1756 too vigorously in permitting no commerce between belligerents and neutrals in neutral vessels except what was authorised before war broke out. Moreover, the decrees were clearly counter to decisions made in the High Court of Admiralty and the Court of Prize Appeals. In the case of the Leopard, for instance, Judge Kelsall had cited Sir William Scott's decisions in the Essex and Immanuel cases, but had apparently missed their point. The Rule of 1756 had been relaxed "by His Majesty" in 1798, if only to allow trade by neutrals between their own country and a belligerent and that belligerent's colonies. The Instructions of January, 1798, and the decisions of Sir William Scott in 1799 and 1800, had made it clear that it was only the direct trade which was to be regarded as illegal. The Advocate General's opinion was forwarded by Portland to the Lords Commissioner of the Admiralty, with the request that they instruct Judge Kelsall in Nassau accordingly.70

The Americans accepted the ban on direct trade with good grace, to the extent that the Commissioners set up by Jay's Treaty to settle the

70 Draft Opinion of Advocate General to Lord Hawkesbury, P.R.O. 30/42, 19/5; Advocate General to Hawkesbury, March 15, 1801, ibid., 20/4; Portland to Lords Commissioner, March 30, 1801, Adm. 1/4186. The Advocate General's opinion was also circulated to colonial Prize Courts, for example, Lords Commissioner to Judge at Jamaica, June, 1801, Adm. 2/1068, 523.
disputes over the 1793-4 seizures determined cases by arbitration without recourse to the Court of Appeals. But what remained a serious point of contention was the re-export of belligerent cargoes from neutral ports. What the British Government and Courts had to decide were the criteria which determined whether goods were bona fide transhipments under neutral ownership, or were simply nominal transfers carried in what amounted to continuous voyages between two belligerent ports. James Stephen, for example, quoted the case of the American vessel Mercury, stopped twice by the same cruiser in 1800, first on a voyage between Havana and Charleston with a cargo of sugar, and then while on its way from Charleston with the identical cargo and papers for Hamburg, though in fact almost certainly bound for Spain. The opinion of the High Court of Admiralty and the Court of Prize Appeals was that fresh clearances were not enough to constitute legitimate re-export, but that the landing of goods and payment of duty in a neutral port did amount to the breaking of a continuous voyage. In the case of the Mercury, it was held that the call at Charleston was simply to obtain false, or "colourable" papers, and the cargo was condemned.

In a summary of the law to be applied, Hawkesbury inscribed on the margin of the Advocate General's Opinion of March, 1801: "A trade

71 For example, Rufus King to Lord Grenville, April 30, 1799, P.R.O. 30/42, 23/3.

72 Stephen, War in Disguise, 52-3.

73 Portland to Lords Commissioner, March 30, 1801, Adm. 1/4186.
between the Neutral Country and the Enemy's Colonies is now clearly permitted. Colonial Produce actually imported into the Neutral Country may be reexported from thence to any other place, even to the Mother Country of that Colony of which it is the Produce.\textsuperscript{74} This liberal interpretation of the law—in remarkable accord with current official policy towards the Americans—while not perfectly acceptable to the neutrals, was declared to be soundly rooted in principles of international law. Yet it only lasted until 1805, when wholesale seizures were once more made of American vessels—followed by condemnations in the Prize Courts—as a result of the Order-in-Council forbidding the import of provisions into occupied Europe.\textsuperscript{75} These were a prelude to the notorious Orders-in-Council of 1807 that amounted to a complete blockade of the European Continent, which led in turn to a steady deterioration of Anglo-American relations until war broke out in 1812.\textsuperscript{76} At all stages, the Prize Courts were the handmaids of British policy rather than its shapers, though this subordination was far more apparent in the Vice Admiralty Courts than it was in the High Court of Admiralty.

As components of an imperial system, the British Prize Courts in the colonies were far more effective than were the Vice Admiralty Courts

\textsuperscript{74}P.R.O. 30/42, 19/5.

\textsuperscript{75}See, for example, William Fawcener to Grenville, March 22, 1806, enclosing an Opinion of Advocate General Nicholl of March 30; Dropmore MSS, 62, Trade, Navigation and Fisheries. This provides an excellent summary of the state of the law concerning neutral trade in 1806.

\textsuperscript{76}See below, IX.
in their parallel function as enforcers of the imperial laws of trade and revenue; despite their differences, they were just as effective as were the Vice Admiralty Courts in settling ordinary maritime disputes. Instance, Navigation Act and Prize jurisdictions differed not only in the degree to which they reflected an imperial system, but also to the extent to which the law they administered was national or international in character. These differences, however, were less important in determining the effectiveness of each jurisdiction than variations in acceptability and enforceability. Thus, the jurisdiction of British Vice Admiralty Courts in Instance cases was effective not only because the law it administered was almost purely the Law of Nations (and certainly not because there was any considerable power of enforcement), but because it was generally accepted. The prize jurisdiction of the Vice Admiralty Courts was almost equally effective, not because the claimed reflection of the Law of Nations was genuine, nor that the decisions were generally accepted—unsuccessful neutrals consistently attacked the national partiality of the British Prize Courts—but because it was supported wholeheartedly by those it was aimed to benefit, and was backed up by a massive power of enforcement. Finally, in explaining the almost complete ineffectiveness of the Vice Admiralty Courts in enforcing the imperial laws of trade and revenue, the lack of sufficient authority to wed international law to imperial fiat was less important than the very low level of local acceptance and the severely limited power of enforcement.
In considering the development of the patronage system and the application of the law, so many personal and official connexions have been touched upon that now it is possible to sketch in with some assurance the whole woven fabric of relationships around the Caribbean Vice Admiralty Courts. Only by doing this can a full appreciation be made of the place that the Courts held in the imperial system and the local colonial scene during the tumultuous events of years between 1763 and 1815.

If the imperial system indeed consisted of a fabric of relationships, the warp was made up of the lines of authority, from the King to the lowliest servants of the Empire, the weft of the complex relationships between the branches of the administration, and between them and the outside world of private interest, at every level. Important commands, to Governors, Lords Commissioner and Judges, signified officially the Royal Pleasure, yet the royal will during this period almost became a formula. By 1783, even the industrious George III had ceased to read colonial correspondence, and the Secretaries of State themselves saw and signed only the most important documents. 

1 Helen T. Manning, British Colonial Government after the American Revolution, 1782-1820, Archon, 1966 (1933), 87. Although letters between principals were usually signed by them, the contents were usually the work of Subministers.
joined the minutiae of colonial business as primarily the concern of departmental senior secretaries or "Sub-ministers", leaving to the departmental principals only the questions of important policy changes—including reform—of war and peace, and the complaints of foreign ambassadors. Subministers working with tiny groups of subordinate clerks and little but actual power as their reward, existed in a comparative obscurity that was not illuminated by the studies of pre-Namierian historians; still with something of the taint of placemen and political appointees, they were moving imperceptibly towards the modern ideal of the professional civil servant, untrammelled by the fluctuations of party fortunes.  

At the centre of affairs for the Vice Admiralty Courts—as for so many Admiralty functions—was the Secretary of the Admiralty, mouth-piece of the Lords Commissioner of the Admiralty, and through them of the King himself as Lord High Admiral. The quality of the Secretary provided the bureaucratic basis of the reputations made by the first

2For the best treatment of Chief Secretaries and Undersecretaries, see Franklin B. Wickwire, British Subministers and Colonial America, 1763-1783, Princeton, 1966, which has an extremely painstaking bibliography; or the same author's "King's Friends, Civil Servants, or Politicians", American Historical Review, lxxi (1965), 18-42. The Namierian "revolution" in the study of Subministers, stemming, typically, from a phrase or two of the Master in The Structure of Politics (p. 37), might plausibly be said to have originated in the publication of John Robinson's Parliamentary Papers by W.T. Laprade in 1922. Recent studies include that by Kenneth Ellis on Anthony Todd at the Post Office (1958), Dora Mae Clark on the Treasury in general (1960) and Jack M. Sosin on William Knox (1961); though there is no detailed study of the Admiralty Secretaries during the period.
Lords of the Admiralty. That they had a good rapport with strong and able Secretaries in John Cleveland (1751-64) and Evan Nepean (1795-1804), stood Lords Anson, Spencer, and St. Vincent in excellent stead as First Lords of the Admiralty, just as the comparative decline of the Admiralty under Lord Sandwich may be as much attributed to the lesser calibre of the congenial and long-tenured Philip Stephens (1764-95) as to the problems of a transitional period in Admiralty affairs. The reforms of Nepean, Spencer, and St. Vincent, and the tremendous exigencies of great Britain's greatest naval war led to a larger, less informal Admiralty bureaucracy, yet though the Secretaryship itself was divided in 1804, the Secretary—or Secretaries—remained the secret of Admiralty success.

Admiralty Secretaries presided over an office that, though it comprised just six clerks on the establishment and 13 supernumeraries in 1785, acted as the clearing house not only for an enormous volume of

3Sir John Barrow, The Life of George, Lord Anson, London, 1839; David B. Smith, Letters of Admiral of the Fleet the Earl of St. Vincent whilst first lord of the Admiralty, 1801-1804, two vols., London, Naval Records Society, 1922, 1927. G.R. Barnes and J.H. Owen (eds.), The Private Papers of John, Earl of Sandwich, Navy Records Society, Ixx, Ixxi, Ixxv, Ixxviii, 1923-38. The increase in Admiralty business may have been unkind to Philip Stephens. In Cleveland's era, the volume of business was manageable; in the post-Stephens period it was delegated to an increasing number of subordinate clerks. Philips, a tireless worker, probably had to do, or tried to do, too much work. The illegibility of his writing is probably evidence of this, rather than of sloppiness.

4Secretaries of the Admiralty during the period were John Cleveland (1751-63), Philip Stephens (1763-95), Evan Nepean (1795-1804), William Marsden (1804-7), John Barrow (1804-45), W.W. Pole (1807-12), J.W. Croker (1812-15).

5Treasury had 25 establishment clerks and nine supernumeraries, Secretary of State seven to ten in all, Board of Trade, nine, and Board of Customs, 18; Fourteenth Report of the Commissioners Appointed to Examine, Take, and State the Public Accounts of the Kingdom, London, 1786, 81-2, and P.R.O. Treasury 1/470, 33-4.
correspondence and orders, but also for legal opinions, agendas for board meetings, contracts, patronage, petitions and matters of political management. Superior to the office of the Lords Commissioner of the Admiralty were merely the King-in-Council and the King-in-Parliament, both represented—at least by the end of the period—by the First Lord of the Treasury, or Prime Minister. Grouped around the office of the Lords Commissioner in a semi-circle were the other departments of the executive: the Treasury, the offices of the Secretaries of State, the Board of Trade, and the Board of Customs. Theoretically subordinate, but increasingly independent, was the High Court of Admiralty under its principal officer, the Judge, which, during the wartime tenure of Sir William Scott, became practically an office of state.

In their ways at least as important as the subministers were the Law Officers of the Crown, the Attorney General, the Solicitor General, and Advocate General, whose functions were those of watchdogs: to act for the Crown before the courts of law, and, as interpreters of the law, to give advice to government on the soundest course of action and to decide whether the actions of government were legally sound. The Law Officers, of whom the one most concerned with Admiralty Court affairs was the Advocate General, tended to stand as intermediaries between government departments, as well as between the departments, the Privy Council, Parliament and the courts of law. Advocates General were usually specialists in civil law, graduates of Doctors' Commons, and the fact that the Judge of the High Court of Admiralty was often a former Advocate General partially accounted for the good rapport that existed between the
High Court of Admiralty and the offices of state. The special interests of the Admiralty, however, were represented by an Advocate of the Admiralty, who sometimes came into conflict with the Advocate General.

In 1760 William Pitt the Elder stated that "the Lords of the Admiralty can very well give directions consistent with law to the judges of the courts of Admiralty, founded upon the King's pleasure, signified by the Secretary of State", and this remained, in the simplest terms, an accurate definition of the chain of command and the channel by which policy was implemented, throughout the period. What did change, in an era that included the careers of such policy-moulders as the two Grenvilles, Shelburne, the younger Pitt, Castlereagh and, in the second rank, Charles Jenkinson and William Scott, was the way in which other Ministers, particularly the First Lord of the Treasury, challenged the monopoly of the Secretary of State in the transmission of orders, and the way in which "the King's pleasure" became less the expression of the sovereign's will than the will of the sovereign power of Parliament and Council; with Parliament able to pass Acts and the Council Orders, directly

6 This was true at least of Sir George Hay (Judge, 1773-8), Sir James Marriott (1778-98) and Sir William Scott (1798-1827).

7 This was particularly true during the period when Sir William Scott, who had previously been Advocate of the Admiralty, was Advocate General (1788-98) and William Battine was Advocate of the Admiralty.

8 Pitt to Lords Commissioner, August 1, 1760, Adm. 1/4124, 10, quoted in Pares, Colonial Blockade, 101.
affecting the Admiralty Courts, and the Board of Trade and Board of Customs—as offshoots of the Council—becoming as important formulators of Admiralty Court policy as any other component of government, even the Admiralty itself.

We have already seen that when new colonial Governors were appointed, new courts erected, or wars declared, requests were sent to the Lords Commissioner of the Admiralty to prepare the necessary Commissions and transmit them to Governors, Judges or naval commanders; when Acts of Parliament were passed, or Orders-in-Council promulgated, the Lords Commissioner were requested to translate them into Instructions for Royal Navy captains, privateers or Vice Admiralty Judges. These processes, however, simply amounted to the machinery of the system, which changed little from one age to the next; they tell us nothing of the creation and shaping of policy, which even at the time of the elder Pitt was a far more complex process. It can best be understood only by looking in some detail at the ways in which certain changes affecting the Vice Admiralty system occurred; particularly, the setting up of new courts, the passing of new Navigation Laws, and the satisfaction of complaints by foreigners in the institution of reforms.

In 1763 and 1764 it was necessary to implement the measures enforcing the Navigation Acts and increasing the revenue to pay off the debt left by the Seven Years' War which, though labelled with the name of Lord George Grenville, were as much the work of Charles Jenkinson,

9Above, IV, 103-4.
then one of the chief secretaries at the Treasury. Between July and September, 1763, the Commissioners of the Customs, prodded by Jenkinson, recommended that a superior Court of Vice Admiralty be created in America, "in so precise a manner and under the decision of such proper persons, that justice may in all cases of this sort be diligently and impartially administered." Jenkinson and Grenville worked on a memorial concerning the plan, which was presented to the King and the Privy Council in October, while the Treasury clerks, in conjunction with the Customs, drew up a draft of the bill that became "Grenville's Sugar Act". At the same time, the Treasury requested the Lords Commissioner of the Admiralty to meet in order to discuss the form of the new Vice Admiralty Court. The Admiralty Lords accordingly met in mid-October, and immediately took advice of the Law Officers as to whether Admiralty possessed powers to create such a Court with cognizance under the Acts of Trade. On receiving an affirmative reply, they eventually decided to appoint a resident Judge on a salary of £800 a year, which, by arrangement with the Treasury, was to be paid out of the profits of disused naval stores.

10 Jenkinson to Customs Commissioners, May 21 and July 20, 1763, Treasury 11/27, 283, 303; Customs Commissioners to Treasury, July 21 and September 16, 1763, Treasury 1/426, 269-72, 289-91.


12 A.P.C. Col. IV, 663; Adm. 3/71, October 19, 1763.
The draft of the bill which made the superior Vice Admiralty Court necessary without specifying its details, was completed in December and steered through Parliament into law early in 1764. An Order-in-Council appointing a Vice Admiralty Judge for North America resident at Halifax, was passed on April 18, 1764. The usual procedure for obtaining Commissions and Instructions was then followed.13

By 1794, when on the capture of Santo Domingo and Martinique it was felt that Vice Admiralty Courts should be established there, the procedure appears to have been considerably streamlined. Late in 1794 Major-General Adam Williamson, the Military Governor of Santo Domingo, wrote to the Secretary of State, Lord Portland, asking for power to erect a Vice Admiralty Court as in Jamaica, and on October 7, Portland signed a letter to the Lords Commissioner of the Admiralty requesting the Vice Admiralty powers for Williamson usual for new Governors of colonies under civil administration. Two days later, Philip Stephens scrawled on the back of the letter, "Prepare Memo to the King in Council to authorize the estabg an Admty C there", and accordingly the Court was commissioned on December 6.14 The same procedure was followed when a similar request arrived in January, 1795 from Major-General Sir John Vaughan, the


14Portland to Lords Commissioner, October 7, 1764, Adm. 1/4161; Adm. 51/M26.
Military Governor of Martinique. Portland wrote the Lords Commissioner of the Admiralty on January 15, 1795, and Stephens inscribed the letter, "Usual Mem for authority to estab. Admty Ct" just four days later. Portland's simple request was backed up by a set of correspondence between General Vaughan and one Walter Colquhon, who claimed to be Judge of the Vice Admiralty Court at Martinique already by authority of the captor of the island, Sir Charles Grey, forwarded to Philip Stephens on February 19 by John King, Lord Portland's senior Secretary. This in turn was inscribed by Stephens on March 4, "Inform Mr King that a Comm has passed constituting a Court of Admiralty at Martinique."
The Commission, in fact, had been entered in the Admiralty Muniment Book on February 20.15

The new Vice Admiralty Courts in the conquered territories of Santo Domingo and Martinique had been authorised within three months of the initial requests in 1794, compared with the nine months between the recommendation and the authorisation of the Vice Admiralty Court for North America in 1764. Yet both in 1764 and 1794 the Treasury and the Secretary of State were able to persuade the Lords Commissioner of the Admiralty that their approval was little more than a formality. By 1807, however, when the question of a new Court in the recently-captured island of St. Lucia was mooted, it was a different story. Not only had the superior Court at Halifax and the Courts in Santo Domingo and Martinique proved short-lived and ineffectual but the power of the High Court of

15Portland to Lords Commissioner, January 15, 1795, Adm. 1/4162; John King to Philip Stephens, February 19, 1795, enclosing letters of General Vaughan dated December 12, 21, 22, 1794, Adm. 1/4163; Adm. 51/M29.
Admiralty to influence policy had increased enormously.

On March 21 and June 30, 1807, the Board of Trade, consisting of Lords Auckland, Temple, Bathurst and Clancarty, Sir George Rose, and Sir Joseph Banks, considered, among other matters a recommendation by the Lords Commissioner of the Customs on October 22, 1806, that a Vice Admiralty Court be set up at St. Lucia "for the protection of the Revenue". The papers were ordered to be sent to Secretary William Marsden for the opinion of the Lords Commissioner of the Admiralty, while the Customs Commissioners were asked to explain why the extension of the powers of the Vice Admiralty Court at Barbados would not satisfy the needs of St. Lucia. On July 17 Secretary Swainson of the Customs replied that while the extension of the powers of the Barbados Court was a good idea, it would not really suffice the local needs of St. Lucia.

On August 10, 1807 the Board of Trade considered a reply from the Lords Commissioner of the Admiralty which enclosed an Opinion given by Sir William Scott to William Marsden on June 24, strongly opposed to the creation of a new Vice Admiralty Court at St. Lucia. For some time past, said Scott, it had been the policy of Government not even to set up civil government in every conquered territory, let alone a judicature. Moreover, it was the firm intention of Government that Vice Admiralty Courts should be few but effective—just enough for the prosecution of prizes and the protection of the revenue—and staffed by responsible and competent officers. To set up a Court without qualified officers

16Minutes of meetings of March 21, June 30, July 17, 1807, B.T. 5/17; William Fawkener to Marsden, March 21, 1807, B.T. 3/9, 125.
would invite endless litigation over disputed decisions, but to provide adequately salaried personnel would be an unjustifiable expense.\(^{17}\)

In drafting a Minute, the Board of Trade respectfully accepted the gist of Sir William Scott's remarks. A Revenue Court at St. Lucia was obviously impractical, but the Board recommended that, "care being taken that although there may not be a Court in each Island, there shall be an Admiralty Jurisdiction in one or more, extending over the whole", and the Board would "have no objection" to such an extension of the authority of the Vice Admiralty Courts by the Lords Commissioner of the Admiralty, providing any salaries granted to officers were moderate. The Secretary of the Board of Trade was instructed to send copies of the Minute both to the Lords Commissioner and Sir William Scott, asking the opinion of the latter as to how many Prize Courts he considered were necessary for the Caribbean region. On December 18, 1807, the Board considered Scott's reply, which reiterated in even firmer language the policy of restricting the number of Prize Courts to those that had been established by the Act of 41 Geo. III, c.96. The Board of Trade then drafted another Minute, sent both to the Lords Commissioner of the Admiralty and to the Secretary of State, Lord Castlereagh, stating that it had decided that it was "expedient as well for the Interest of the British Captors as of the Subjects of Neutral States, as far as the correct Administration of Justice" was concerned, that Prize Courts be restricted to those in which Judges were salaried; but considering the amounts of revenue collected in

\(^{17}\)Minutes of meeting of August 10, 1807, including Scott to Marsden, June 24, 1807, B.T. 5/17.
Instance and Revenue cases, that no Vice Admiralty Courts actually be disbanded, even if they did not enjoy Prize jurisdiction.\footnote{18}{Ibid.; Stephen Cotterell to W.W. Pole and Cotterell to Sir William Scott, August 12, 1807, B.T. 3/9; Minutes of meeting of December 18, 1807, B.T. 5/17; Fawkener to Pole, December 24, 1807, B.T. 3/9.}

The result of this flurry of inter-departmental correspondence, spread over 14 months, was that a separate Court in St. Lucia never materialised. By an Order-in-Council of November 8, 1809, however, the Judge of the Vice Admiralty Court of Barbados was granted a salary, pension and Prize jurisdiction;\footnote{19}{See J.W. Compton to Lords Commissioner, August 10, 1815, Adm. 1/3903.} and in December, 1810, a combined Court for Martinique and St. Lucia with jurisdiction only in Instance and Revenue cases was erected after the recapture of Martinique. To this latter creation, which required special authorisation from the Privy Council, Sir William Scott, relenting, gave gracious approval, agreeing that it would be "beneficial to the Publick Service."\footnote{20}{Scott to Lords Commissioner, November 18, 1809. The erection of a non-Prize Court had been approved by the Lords Commissioner, but they disclaimed their powers to erect an Instance Court in a conquered territory. It was therefore authorised by the Privy Council in an instrument under the Privy Seal,'signed by Lord Bathurst; Adm. 51/N18, December 15, 1810.}

If the creation of new Courts produced interaction between several personalities and departments of state, so that questions of the transmission of Commissions and Instructions appeared by comparison to be matters of simple interdepartmental routine, the passage of Acts of Parliament directly affecting Vice Admiralty Courts, and Orders-in-Council--
almost innumerable in wartime—modifying, supplementing or surplanting them, brought in so many persons and interests as to represent a cat's-cradle of relationships, including petitioners, politicians and policy-makers as well as civil servants. In 1797, for example, the Jamaican Committee of Correspondence instructed the Agent of Jamaica, William Sewell, to petition the Privy Council for a change in the Navigation Acts which would affect the Vice Admiralty Courts in the colonies. Sewell approached John King, the chief secretary to the Secretary of State, Lord Portland, and King passed on the petition to William Fawkener, for the attention of the Board of Trade. Two days later, Fawkener replied privately to King that since the Board of Trade was unable to meet because there was not a quorum in Town, he had raised the matter with Lord Liverpool, the President of the Board, in personal conversation. Liverpool had stated that he found the Jamaican proposals unexceptional commercially, "But as the Business has Reference to the Publick Revenue and also to the Naval Service...no Decision can be taken upon it, but with the joint Concurrence of the first Lord of the Treasury and the first Lord of the Admiralty". It then had to be sent to the Advocate General for framing into law and for suggesting ways in which Governors and the Vice Admiralty Courts might be apprised of the changes. Another point at issue was whether the modifications should take the form of an Order-in-Council or an Act of Parliament, since they appeared to conflict with the Act of 12 Car. II, c.18. Lord Liverpool had concluded by suggesting that Lord Portland approach both William Pitt, the First Lord of the Treasury, and Lord Spencer, the First Lord of the Admiralty, for their opinions, and that the matter be decided at the next meeting.
of the Board of Trade, with Pitt and Spencer in attendance. 21

At this level, the distinction between functions faded, and personal relationships obviously had more importance than departmental affiliations. This explains, for example, why it was almost impossible to distinguish the functions of William Pitt as Prime Minister from those of his cousin William Grenville, and Henry Dundas as subordinate Ministers while all three were in office together. 22 Pitt, Grenville and Dundas, for a period, were practically triumvirs, regarded as almost equal sources of policy and patronage, and around them were concentric rings of aspiring relatives, friends and clients. For perhaps the first time, administrative ability was a pre-requisite for office, and such statesmen as Lords Liverpool and Auckland owed their ascent as much to their abilities and ambitions as to the system of relationships; yet in the lesser ranks there were always able, ambitious and loyal aspirants such as William Scott and his brother John, later Lord Eldon, John Nicholl, Evan Nepean and James Stephen.

The Board of Trade--alias, the Committee of the Privy Council for Trade and Plantations-- 23 was one of the most important meeting places to

21 Fawkener to King (marked 'Private'), October 28, 1797, B.T. 3/5, 319. The relevant Act concerned the manning of vessels with crews that were three-quarters British. The Advocate General in 1797 was, of course, Sir William Scott. See also, for examples, B.T. 3/3, 373 (1791); B.T. 3/4, 327 (1794).

22 Pitt was First Lord of the Treasury from 1783-1807, except for 1801-4.

23 The Board of Trade was officially abolished in 1782, but was reconstituted as a Committee of the Privy Council in 1784, and even after a President of the Board of Trade was reappointed after 1792, still tended to be known by its interim name. For example, B.T. 3/5, 319 (1797).
which experts and influential friends were summoned when need arose.
The most frequent unofficial Councillors were the Law Officers, both of
the Crown and of the various departments of state, but even after he
was promoted from Advocate General to Judge of the High Court of Admiralty
in 1798, Sir William Scott continued to be summoned to lend his opinion
to decisions of policy in maritime and judicial matters. In February,
1801, for example, he was in attendance at a Committee that included
Lords St. Vincent, Clare and Glenbervie, Sir Joseph Banks and Dudley
Ryder, to discuss complicated matters concerning the embargo on Danish
and Swedish vessels, the question of the enforced sale of cargoes and
compensation. In conclusion, the Committee ordered that the finished
Minute be transmitted "to His Majesty's Advocate, Attorney and Solicitor
General, and desire that they will prepare, and lay before their Lordships,
with all convenient Speed, the Draft of an Order in Council conformably
to their Lordships' Opinion expressed in the above Minute, to be submitted
to his Majesty for his Royal Approbation."  

24 See, for example, the summons to attend the Committee of the
Privy Council for Trade to Law Officers B.T. 3/1, 13, 14, 22, 45, 72, 169, 173
(1786-8). These sessions were chiefly concerned with the need for changes
in the Acts relating to trade with the Americans.

25 In fact, he was sworn in as a Privy Councillor when appointed
Judge of the High Court of Admiralty in 1798.

26 Lord St. Vincent had just been appointed First Lord of the
Admiralty; Sir Joseph Banks, President of the Royal Society, had been a
Privy Councillor since 1797; Dudley Ryder, a Vice President of the Board of
Trade since 1792, became Lord Harrowby in 1803.

27 Minutes of meeting of February 23, 1801, P.R.O., 30/42, 7/8.
Many of the Councillors were active in the House of Lords and a remarkable number of subministers and senior bureaucrats were Members of the House of Commons, so that when it became necessary to pass Acts of Parliament, these "King's Friends" between them might be expected to steer official legislation through. Imperial legislation rarely aroused great animus in Parliament, and except for an occasional request for papers,\textsuperscript{28} neither House showed a marked interest in the Vice Admiralty Courts, even when they became a cause of discord with the United States and other neutral powers. For example, the Act of 41 Geo. III, c.96 consolidating and reforming the Vice Admiralty Courts—stemming from a whole series of American complaints transmitted by Ambassador King to Lord Grenville—\textsuperscript{29} was introduced and eased into law by Sir William Scott and Sir John Nicholl, two of its chief architects, almost without dissent. In introducing the bill, Sir William Scott, Member for the close borough of Downton, gave one of his best speeches, and he was strongly supported in the debate by Lord Hawkesbury, William Wilberforce and two Proctors of the High Court of Admiralty, Doctors Lawrence and Martin. All that Messrs. Johnstone and Hobhouse could say against the bill was that it was long overdue.\textsuperscript{30}

\textsuperscript{28}For example, Conway to Lords Commissioner, February 20, 1766, enclosing a Resolution of the House of Lords of February 15, calling for "Copies of all Letters, Orders, Representations, Memorials and Papers relating to the Appointment of Courts of Vice Admiralty in America", Adm. 1/4127.

\textsuperscript{29}The diplomatic activity leading up to this and other reforms is considered in much greater detail below, IX.

\textsuperscript{30}Parliamentary Register (Debrett), XV, 1801, 176-83, debate of April 29, 1801.
Even after 1803, on the numerous occasions when Captain Sir Charles Pole and the eccentric Admiral Lord Cochrane rose up in Parliament to oppose or propose legislation, alleging that they and other officers of the Royal Navy had legitimate grievances against the Admiralty Courts, they could never obtain sufficient support to challenge seriously the voting power of the King's Friends. The voting on the Resolution of Lord Cochrane in July, 1810, condemning the High Court of Admiralty, for example, was 76:6 against; and the voting on the Third Reading of the Registry Bill in July, 1813, was 45:9 in favour.31

The Government, however, did not go into legislation lightly, especially in making changes in maritime regulations that might arouse the opposition of mercantile interests. Whenever possible, the public was prepared for policy changes by the publication of anonymous pamphlets presenting arguments supporting them, and many of the Sub-ministers--most prolifically, William Knox and Thomas Whately--32 were eager pamphleteers in the Government cause. For the promotion of the interests of the Admiralty Courts there was no-one better equipped than James Stephen, ex-Proctor of the Vice Admiralty Court of St. Kitt's and now the most successful Advocate in the Court of Appeals, faithful supporter of the Government and would-be placeman. When in 1805 he wrote a long

31Ibid., June 28, 1803; Cobbett's Parliamentary Debates, 1805, IV, 61-5; V, 132 sqq.; 1808, X,409; 1810, XV,469; XVI, 12-14; XVII,650; 1811, XIX,476-93; XX,464, 985-1012; 1812,XXIII,626; 1813, XXVI,304-11.

32Undersecretary to the American Department and Secretary to the Treasury respectively. Between them, they wrote some dozen political pamphlets; Wickwire, Subministers, 203-5.
treatise attacking the abuses committed by neutral carriers, he found an eager reader in Sir William Scott, who had recently been advocating a stronger Government policy against the neutrals. On August 25, 1805, Sir William Scott wrote a long letter concerning the MS to no less a person than William Pitt.

James Stephen had asked Judge Scott's advice as to whether he should publish the treatise as an anonymous pamphlet, or simply present it to Government as a memorial. Scott recommended the former course since, in his opinion, the public was ill-informed, or ill-advised, as to "what important interests are involved in the present questions, and because I think that if it shd. carry our Pretensions somewhat higher than the Convenience of Publick Affairs may allow, It will commit Government less, than if it was afterwards to come forward with any Stamp of Official Communication Upon it. It will express only the Sentiments of an unconnected but well-informed Individual that will involve nobody in any Responsibility but the Writer. At the same time, it may be in my Power to prevent the insertion of any thing that may give just offence."

Sir William Scott told William Pitt that he believed that there was a subtle plot afoot in many quarters "to abolish maritime Capture entirely". Certainly, the French since the war began had not detained a single neutral vessel, hoping to force the British to do likewise. The result would be that France would "carry on the whole of her Commerce undisturbed in neutral Vessels", a plan that the Americans at least were quite prepared to accommodate. Unfortunately, there were some
British merchants who were ready to go along with the Americans, and had recently petitioned the Board of Trade that enemy cargoes in neutral vessels not be seized; and a few underwriters were also opposed to an aggressive policy against the neutrals, probably because they were unpatriotically willing to underwrite enemy risks.

"You are the best Judge how far in Policy such Schemes may be Countenanced", concluded the High Court Judge to his Prime Minister; "but I rather feel it right that you should be fully informed of what I have observed upon Grounds that satisfy my own Judgement that such a Purpose exists, that it is eagerly pushed by the Enemy, and by neutral States--and that it has many friends amongst our own commercial Subjects, who are likely to bring it forward in a variety of forms and modifications."33

Pitt evidently approved of Stephen's treatise and Scott's suggestion, for the work was published anonymously as a book, entitled War in Disguise; Or the Frauds of the Neutral Flags, later in 1805.34 Any doubt as to its author, or its authority, must have been removed when James Stephen became a Member of Parliament under the patronage of Spencer Perceval, and was used by the Government as the framer of the Orders-in-Council of 1807.35

33Scott to Pitt, August 28, 1805, P.R.O. 30/8; 176, 185.  
34Something of a best-seller, it went through three editions in a year. Stephen wrote directly to Pitt in January, 1806, to introduce the Second Edition; Stephen to Pitt, January 6, 1806, P.R.O. 30/8; 180, 185.  
35He was later appointed Master in Chancery, living until 1832, to see his son and namesake become more powerful than he had ever been. See above, III,109, n.42.
The transactions between Pitt, Scott and Stephen showed a significant mingling of policy and interest. Despite the arguments used by the lawyers to convince the statesman of the need, in prosecuting the war against the French, for a stronger policy against the neutrals, the motive of increasing lucrative Prize Court business was not far beneath the surface. The arguments used by James Stephen in War in Disguise applied almost exclusively to the trade carried on in neutral vessels to and from the enemy colonies in the West Indies, but it is likely that he and Sir William Scott were more interested in the business of the High Court of Admiralty and the Court of Appeals than they were in increasing the business of the Caribbean Vice Admiralty Courts. Nonetheless, there was a strong concurrence both of policy and interest between metropolis and colonies. The ideal, for policy-making statesmen and Admiralty lawyers alike, was an interconnected system for the enforcement of the laws of trade and prize.

The ideal of strictly professional Vice Admiralty Courts under the control of the Lords Commissioner of the Admiralty or the High Court of Admiralty but independent of local interests and influences, was never achieved, despite gradual progress in this direction. The difficulty of employing adequate permanent personnel was one of the chief reasons for the lack of a loyal professionalism; but the absence of a permanent metropolitan interest in the efficiency of Vice Admiralty Courts and the sheer problems of distance and communications were additional factors which operated against complete imperial control.
Besides this, the local independence of Vice Admiralty Courts was hedged by competing interests: Governors, merchants and planters entrenched in colonial Assemblies, Customs officers, and during wartime, Royal Navy captains and privateers. Naturally, the deficiencies of the Caribbean Courts were poorly documented, but from the disputes and complaints which found their way to London we can see that each of the competing local interests expressed different dissatisfactions. The Vice Admiralty Courts, it seems, were either too lax or too strict, depending on the circumstances and the point of view. Once more, the solution was obvious, if not immediately practical: higher standards, greater uniformity, stronger imperial control.

From the seventeenth century, Commissions, Orders and Instructions were sent out to Vice Admiralty Courts whenever the need arose, but these might often just as well have been posted in the Lost Letter Office as far as the imperial authorities were concerned. Save for the occasional complaint or Appeal, news from the Vice Admiralty Courts in the early years was sparse indeed. Letters from England themselves were rarely acknowledged, and regular reports were unheard of. As Nathaniel Bishop, the Deputy Register of the High Court of Admiralty was forced to admit in 1764, in reply to an enquiry concerning the whereabouts of the French ship Fameux, thought to have been libelled in a colonial Court, "Vice Admiralty Courts do not transmit to this office any Account of their proceedings against Ships, unless by way of Appeal, and in prize cases the Process is transmitted to the Registry of the Lords of Appeal. . . .

37Exceptions included appointments made in London which conflicted with officers already acting on the spot.
it rests with the Claimant of the Ship to inform himself into what Port abroad the Ship was carried."  

As time went on, Vice Admiralty Courts were requested, with increasing frequency, to furnish reports on particular cases, papers of specific vessels, and lists of serving officers, though it was not until 1803 that Vice Admiralty Judges were ordered to send annual lists of personnel. Predictably, it was the questions of Admiralty perquisites and profits, and prize affairs during wartime, that highlighted the need for comprehensive and regular reports. During the American War of Independence, the Lords Commissioner of the Admiralty sent out a circular to all Vice Admiralty Judges asking for lists of vessels deemed recaptures, presumably to check up on Admiralty Droits; and in both the Maritime and French Revolutionary Wars questionnaires

38 Bishop to Lords Commissioner, March 27, 1764, Adm. 1/3883.

39 For example, the request for a report by the Judge of the Jamaica Vice Admiralty Court on the case of the snow Sukey, seized by the Kingston privateer Maria, after a complaint by the American Ambassador, Pinckney, to Lord Grenville; Lords Commissioner to Judge at Jamaica, October 6, 1793, Adm. 2/1063, 505. See also Nathaniel Bishop to John Cleveland, February 5, 1763, Adm. 1/3883 (details of French Boulogne); Lords Commissioner to Judge at St. Kitt's, December 7, 1780, Adm. 2/1060, 409; 1061, 23 (papers of Venetian Packet); Lords Commissioner to all Judges, November 10, 1813, Adm. 2/1077, 499 (request for all charts taken in ships' papers).

40 Lords Commissioner to Judges at Jamaica, Antigua, Barbados, Bahamas and Bermuda, Adm. 2/1070, 235. A circular requesting lists had been sent to these Judges, plus those in Tortola, Tobago, Dominica, Martinique, St. Vincent, Grenada and St. Kitt's, on November 4, 1799, Adm. 2/1067, 484.

41 By the Act of 17 Geo. III, c.40, the captors took only one-eighth of recaptured vessels' worth, by way of salvage, the Admiralty took another eighth, while the remaining three-quarters went to the original owners if they could be traced. This, however, was kept by the Receiver General until claimed. There were 35 recaptures decreed in Jamaica alone, 1778-81; Edward Long to Philip Stephens, February 11, 1782, Adm. 1/3887.
were sent to some Vice Admiralty Courts, asking for lists of vessels condemned, Letters of Marque issued, and Flags of Truce authorised. Royal Navy officers were expected to keep detailed logs at all times, and privateers were enjoined—with only moderate success—to keep logs while out on cruise and to send reports of all vessels seized; but it was not until the Prize Act of 1803 that Vice Admiralty Judges were ordered to send half-yearly returns of vessels condemned—changed to quarterly returns in 1809—and only in 1814 were all Judges asked to provide lists of Letters of Marque issued since 1803.

The lists of privateers and the regular returns of condemnations were quite efficiently collated; but when commissions were established to enquire into more sensitive areas, such as the fees charged and other practices of the Vice Admiralty Courts, success was much less even. The Acts of 1801 and 1805 authorised the imperial government to standardise fees, but an investigating committee was not established.

Requests were sent to most Courts in 1777; see returns of condemnations from Antigua, Barbados, Dominica, Grenada, St. Vincent, Adm. 1/3885. H.C.A. 49/99 sqq. contains returns of condemnations for 1793-5 for Antigua, Bahamas, Bermuda, Grenada, Dominica, St. Kitt's, Montserrat and Tortola, as a result of "a Monition under the Seal of the High Court of Delegates" dated March 7, 1795. Lists of sugar cargoes condemned and flags of truce authorised, 1778-81, were printed in the Journals of the Assembly of Jamaica, 7, 374-8, 408, and transmitted to the Secretary of State by the Governor; C.O. 137/72, 75.

Acts of 43 Geo. III, c.160, s.52 and 49 Geo. III, c.123. The huge archive of Royal Navy logs is in P.R.O. Adm. 1. Privateer logs are extremely scarce. Three of the few are those of the Pallas (1799), Louisa (1800) and Margaret (1805), in Adm. 1/3867-8.

Lords Commissioner to all Judges, March 16, 1814, Adm. 2/1078, 88. Replies from Jamaica (41 between 1803-12), Barbados (26), Antigua (131), Bahamas (70), are in Adm. 1/3902 (1814).

The prize returns, along with other miscellanea, such as the list of fees in prize cases from Antigua, are in H.C.A. 49/99 sqq.
until November, 1811, and when it made its report in August, 1812, it had a very heterogeneous tale to tell. Through a combination of local reticence and metropolitan indifference, a standard system of fees had not been established for the Vice Admiralty Courts before the war ended in 1815.

The extent to which Judges, Governors and Customs officials worked together in amity depended both on the degree that their views of the functions of imperial government were identical and that they shared control from the imperial metropolis. Governors never had the power to choose the Customs officers, but they were bonded to support them and therefore rarely came in conflict with them. Governors and Judges, on the other hand, were not so bound to support each others' functions. As Governors lost the power to choose as Judges and other officials of the Vice Admiralty Courts the men they wanted, disagreements became more likely; though as time went on, Judges were increasingly enjoined to co-operate with Governors and Customs officers in the execution of the laws.

Colonial Assemblies represented local planter and merchant interests, and so were often in opposition to the imperial will. Despite the long tradition of antagonism between executive and legislature, however,

46 Acts of 41 Geo. III, c.96; 45 Geo. III, c.72 f.37-9; Lords Commissioner to eight Gentlemen, November 14, 1811, Adm. 2/1075, 534. Report is included in James Bush to J.W. Croker, August 8, 1812, Adm. 1/3900.

47 For a fuller discussion of these aspects, see above, IV, 95-8.
Governors--especially those who enjoyed long terms in office--quite often identified themselves with the creole oligarchy; though, as colonial planters and merchants were often divided, Governors ran the danger of choosing sides. Almost invariably, Governors who sided with local interests did so merely for the reward of an easier tenure; but Customs officers, while usually expatriates like the Governors, were quite often open to bribes from the mercantile community. Vice Admiralty Judges and officials, though they were not always expatriates, were less concerned with local popularity, and, despite notorious exceptions, were not often subject to accusations of corruption, from Governors, Customs officers, Assemblymen or officers of the Royal Navy. Accusations of inefficiency, partiality or extortion were far more common.

Although the Courts were busiest during wartime, it was ironically, during peacetime that most of the internal colonial squabbles involving the Vice Admiralty Courts occurred. During peacetime, the division between planters and the merchants, who carried their trade and were so often their creditors, was at its most severe; and Customs and Vice Admiralty officials, in the dearth of business, were usually eager to enforce the laws of trade. In wartime, on the other hand, the internal

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48 Richard Pares, Merchants and Planters, Cambridge for the Economic History Review, 1960, passim. Merchant communities were limited to the larger colonies, the dichotomy being particularly noticeable in Jamaica. There, the division--involving the Governor--centred at one time round the choice of capital; the merchants preferring Kingston, the chief port, and the planters, Spanish Town, where they had their town houses. The Harrison dispute also involved a similar division. Metcalf, Royal Government, passim., and above, III, 77-8.

49 For a much fuller discussion of the part played by H.M. Customs in the enforcement of the laws of trade and revenue, see below, VII.
differences tended to subside. Planters and merchants, Assemblermen
and Governors, shared a common concern for the defence of their colonies;
the laws of trade were modified or ignored; and the Vice Admiralty Courts
became popular tribunals for the condemnation of enemy vessels captured
while threatening the security of the colonies, or for the adjudication
of seizures made by privateers that were usually financed and manned
by local men.

When Governors, Customs officers and Judges all identified
themselves with the local oligarchy—nearly always in wartime, but
occasionally in peacetime too—it was the Royal Navy alone which complained.
Particularly in the remoter islands, where the Courts were least amenable
to imperial control, the Royal Navy tended to believe that all local
interests conspired to make their duty difficult and unprofitable.
Governors, executive officials and customs officers were thought to be
under the thumb of the creole oligarchs, who were suspected of being
eager for any form of illicit trade. Vice Admiralty Courts were accused
of being unco-operative, inefficient or extortionate, unwilling to
prosecute contentious or non-lucrative cases, and likely, in wartime,
to favour the interests of the local privateers rather than those of the
more respectable Royal Navy. In cases of disagreement and misunderstanding,
it was the responsibility of the Lords Commissioner of the Admiralty
to keep the peace: to make sure that the Courts and the captains under
their control did not fall out irreparably, and that, through the Privy
Council and the Board of Trade, they informed Secretary of State and
Customs Commissioners, so that they might keep firmer control over
colonial Governors and Customs officers respectively.
Some examples of the complaints against Vice Admiralty Judges can best give an impression of the nexus of local relationships. The Bahamas was one colony which was so riven by factions that it was impossible for the Vice Admiralty Court to please everyone, and Judge Thomas Atwood was as much accused of siding with a faction as of failure to co-operate with Governor Montfort Browne. Atwood was said by his enemies to be in collusion with certain privateer captains, with whom he was connected by his recent marriage. In December, 1779, in suspending him from office, the Governor referred to the Judge's "partial Conduct to some of the Merchants of this Colony in Condemning their Prizes after their Arrival--contrary to Act of Parliament, and the dissatisfaction and Injustice done to others who loudly complain of the Interested motives from whence they proceed." The signing of a petition by eleven privateer captains four days later, in which they claimed that Atwood had acted "Honestly and uprightly, to the best of our knowledge and belief and to the general satisfaction of us the concern'd", was hardly a good testimonial, and the suspension stood.

Judge Weekes of Barbados was more successful than Atwood in pleading his case to the Lords Commissioner of the Admiralty for reinstatement in May, 1781, but the wholesale complaints of which he was

50 See above, III, 97-8.

51 Atwood to Rt. Hon. Henry Penton, December 13, 1779, enclosing Browne to Atwood and Atwood to Browne, December 9, Testimonial, December 13 and copy of Browne's commission to Atwood, July 31, 1779, Adm. 1/3885.

52 See above, III, 78.
the subject after 1793, presented a picture that was far from flattering to most of those concerned. In October, 1793, the President of the Council of Barbados, William Bishop, suspended Weekes--a "painful necessity", considering his appointment had been upheld by the Lords Commissioner of the Admiralty--for allowing the proceeds of the condemnation of the French vessel Mirabeau to be distributed among the crew of an uncommissioned privateer, and thus depriving the Government of its Admiralty Droits. In defending his action to the Lords Commissioner, Weekes claimed that they would find "that the President of Barbados, because I refus'd to appoint him to be the Agent to that Property, and to decree the money to lay in his hands, he immediately suspended me of my office. Besides my idea indeed of the Said President having no Pretensions to demand such an usurping Requisition, I never cou'd have issued such a Decree, conscientiously or warrantably, because he is a notorious Bankrupt in Circumstances." Weekes also stated that his suspension was the result of "party picque", the work of a faction that included William Bishop, and was led by Philip Lytcott and Edward Applewhaite, "whose pecuniary influence extends over the whole island."

In such financial matters, Judge Weekes was evidently an expert, for though he was ordered reinstated by the Lords Commissioner, he was twice found guilty of corruption within a year. Governor G.P. Ricketts,

53 Bishop to Philip Stephens, October 24, 1793, Adm. 1/3889; Weekes to Stephens, August, 1794, Adm. 1/3890; Petition of Weekes, no date, Adm. 1/3891.
on arriving in the island, wrote both to the Admiralty and the Secretary of State, Lord Portland, to tell them that Weekes had been found guilty of extortion by a common law court in 1793 in his office of J.P., and that in the question of a charge that he had taken a bribe of £750 to condemn a vessel called the La Liberté to its captors, the Grand Jury had just brought in a True Bill. "And with much regrets", wrote the Governor, "I add that from repeated and impartial enquiries, I find his character and conduct universally condemned."\(^{54}\)

Lord Portland agreed with Governor Ricketts' findings as to Weekes's unfitness and obtained the approval of the Treasury for his sacking; but since the Admiralty had ordered the Judge's reinstatement, he found himself "incapacitated by one Board from complying with the wishes of another." The Law Officers of the Crown were called in for their Opinions, and after deliberation decided that whereas the President had acted \textit{ultra vires} in suspending the Judge in the absence of the Governor with less than a quorum of his Council, Weekes had acted even more illegally in the question of the Mirabeau. The Lords Commissioner of the Admiralty were thereupon persuaded to supersede Weekes by appointing Jonathan Blenman in his place, in April, 1795.\(^{55}\)

A case where the interests were reversed, and where the Governor complained of a slack Vice Admiralty Judge in fulfilling the terms of

\(^{54}\)Ricketts to Stephens, July 22, 1794, Adm. 1/3890.

\(^{55}\)Portland to Lords Commissioner, September 13, 1794, Adm. 1/4162; Adm. 2/1064, 30, 33-4, 101, 182, 263.
his Trade Instructions, occurred in Dominica in 1788. The case was made more difficult because Alexander Stewart was not only the Judge of the Vice Admiralty Court, but also a substantial planter with a large following who had been President of the Council; but Governor Orde received ample support from the officers of the Customs and the naval commander of the Leewards Station, Admiral Parker. At first, Orde remonstrated tactfully with Stewart by letter, but receiving nothing but insolence in return, complained to the Secretary of State, Lord Grenville. In the voluminous supporting evidence, it was shown that both His Majesty's Customs and the Royal Navy had been blocked in their prosecution of the Acts of Trade. In one instance, the Collector, investigating the clandestine landing of American shingles from the local vessel Ruby, was unceremoniously dumped in the harbour; but when the case was prosecuted in the Vice Admiralty Court, Judge Stewart had thrown it out and refused costs to the Collector, who was subsequently sued for £1,000 damages. Besides several similar charges, Stewart was accused of illegally landing slaves from a French vessel for use on his own plantation. 56

Lord Grenville, without difficulty, worked up a strong head of steam and wrote off angrily to the Lords Commissioner that he saw "the Conduct of the Gentleman therein complained of in the strongest light of Criminal Reprehensibility, that it has been general in the Stations he serves in and of long continuance;--that in consequence of it, illicit

56The extensive papers in the Stewart case are in Adm. 1/3888, including Orde to Stewart and Stewart to Orde, July 2, 1789 and Stewart to Philip Stephens, July 20, 1789. See also Stewart to Lords Commissioner, November 10, 1788, Adm. 1/3886.
Trade has increased and been encouraged instead of the contrary that the Officers of the Navy and Revenue have been so alarmed for the Safety of their Persons and Property that they have almost ceased to do their Duty." As a result of this missive, and the equally powerful remonstrances of Admiral Parker, the Lords Commissioner wrote to Stewart in December, 1789, relieving him of his office, and appointing John Matson in his place.57

It was perhaps inevitable that colonial merchants would resent the Royal Navy snooping around during peacetime to add a seaborne arm to zealous Governors and Customs officers attempting to curb their favourite illicit trades; but even during wartime, despite the undoubted services that the Royal Navy performed in defending the West Indian islands and convoying, there was never much love lost between the Navy and the colonists. The colonists considered that naval captains were always far more interested in cruising for prizes than in fighting the enemy, and only visited port to bring in seized vessels and to impress seamen.58 For their part, Royal Navy captains tended to think

57 Grenville to Lords Commissioner, October 19, 1789, Adm. 1/4154 and Lords Commissioner to Stewart, December 3, 1789, Adm. 2/1062, 521, 523.

58 These were common complaints even during the Seven Years' War. In December, 1761, for example, 72 merchants of Kingston, Jamaica complained to the Government in England by way of Governor Moore, that Admiral Holmes was not giving adequate protection to Jamaica, the coasts of which were swarming with enemy privateers. Admiral Holmes, whose behaviour the merchants found haughty, was also held responsible for stopping the legitimate indigo trade with the Spanish Main, and for outfitting captured vessels to compete with native Jamaican privateers. Governor Moore to Lords Commissioner, December 14, 1761, Adm. 1/3819. For examples of impressment disputes, see Governor Dalling of Jamaica to Sir Peter Parker, May 7, 1780, C.O. 137/77; Governor Lord Balcarres of Jamaica to Lord Portland, June 29, 1797, C.O. 137/98. Other disputes arose over the release of prisoners, the victualling of the Fleet and the division of spoils in the case of joint captures with local privateers.
that local merchants were only intent on competing for prizes or engaging in clandestine trade; that Governors were all too often willing to comply, by commissioning privateers too easily, by opening up colonial ports to foreign vessels on flimsy pretexts, issuing licences and authorising flags of truce; and that the Courts were also failing in their duty by failing to prosecute cases of obvious misdemeanour. Much misunderstanding and conflict arose over the relaxation of the laws of trade by the Free Ports Acts and, during wartime, the Licence Trade, the situation reaching a climax of acrimony during the tenure at Jamaica of Admiral Sir Hyde Parker, between 1798 and 1800. 59

The Admiral and his captains considered that they were being deprived of lawful prizes by the slackness of the Governors, particularly those of Jamaica and the Bahamas. "In consequence of the Free Ports being opened", wrote Admiral Parker to Governor Lord Balcarres of Jamaica, "nothing is more common than an application being made for a License which is signed by the Governor, and left blank to be filled up with Vessel & Master's Names. The License is sent by the Correspondent

59 During the American War of Independence, the chief bone of contention had been over the issue of flags of truce, which led to heated disputes, for example, between Governor John Dalling of Jamaica and Admiral Sir Peter Parker. See Dalling to Lord George Germain, May 27, June 18, July 28, August 1, 1779, C.O. 137/75; May 10, August 12, 1780, C.O. 137/77; November 24, 1781, February 16, May 20, 1782, C.O. 137/82; Admiral Gambier to Lord Sydney, April 12, 1784, C.O. 137/84.
to the Havannah, La Guiara, or wherever the Vessels may be that it is meant for. This enables such Vessel to perform a coasting voyage with Spanish Property, and she runs no risque—for, being met by a Cruizer, she has the Governor's License, & is then bound to Jamaica or Providence; otherwise she performs what voyage the owners think most advantageous, uninterrupted."60 Other vessels left British colonies cleared for a Spanish port under licence, though in fact bound for a destination in French Hispaniola. "Supplies have been sent lately from Jamaica to Jeremie", wrote Cathcart, the British Agent at Cap François, in November, 1799, for example, "in vessels under Spanish and Danish colors";61 and five years later, James Stephen described this period as one in which the trade between the British colonies and southern Hispaniola was so lucrative that the regulations governing it were "broadly violated in the face of day."62

In a correspondence that thundered on for months, Balcarres pointed out that the Licence Trade was quite legal, and hotly refuted the charge that he had signed blank licences, though Parker was able to produce evidence that licences were slackly filled in and could quite easily be

60 Parker to Balcarres, March 23, 1800, C.O. 137/104.

61 Cathcart to Balcarres, November 17, 1799, C.O. 137/103, 103. See also, Edward Thornton (British Consul at Philadelphia) to Edward Corbet (Cathcart's successor), on American complaints at this connivance, May 19, 1801, C.O. 137/106.

62 James Stephen, The Opportunity, or Reasons for an Immediate Alliance with St. Domingo, London, Hatchards, 1804, 64-5. Stephen cited in particular, the case of the Achilles, heard before the Lords Commissioner for Prize Appeals in March, 1804.
The Admiral wrote frequently to the Lords Commissioner of the Admiralty, the Governors of Jamaica and Bahamas to the Secretary of State, and the Agent for the Bahamas to the Board of Trade. Almost inevitably, the departments of state asked for the Opinion of the Advocate General, and in due course, Sir John Nicholl, with Solomonic wisdom, advised that commanders of Royal Navy vessels be sent fresh and more precise Instructions, that Governors be enjoined to be far more careful in the issue of licences and be bonded to ensure that their provisions were correctly carried out, and that the Board of Trade think out its commercial policy with much greater clarity.

Parker produced three blank licences, but none was signed by Balcarres. His other "evidence" included licences which did not tally with the ship specified and one in which a name had been cruelly scratched out and another substituted. It is likely that Governor Dowdeswell of the Bahamas was far more compliant than Balcarres. Writing to the Admiralty on January 28, 1800, Sir Hyde Parker said, "I am told by Persons of knowledge and confidence, and I have the fullest Conviction of the Fact, that the Licences of Governor Dowdeswell, without Name of Vessel, Master, Voyage or Date, have been sold at Havanna, for 200 Dollars each, altho' at Providence there is paid only 25 Dollars for them." Adm. 1/250.

Opinion of Sir John Nicholl, December 1799, enclosing copies of the Instructions to the Governors of Jamaica and the Bahamas for opening up the ports, and to the Royal Navy to allow the trade, correspondence between George Chalmers, Agent for the Bahamas, John Fawkener at the Board of Trade, John King at the office of the Secretary of State, Evan Nepean at the Admiralty and Sir John Nicholl, and between Admiral Parker and Nepean. Further correspondence over the hindrances of the Free Port and Licence Trades persisted for years. In March, 1804, for example, the Agent of Jamaica, John Sullivan, begged the Lords Commissioner of the Admiralty to provide further orders "for the protection of so valuable a branch of commerce", the particular instance being the detention of the Spanish vessel Dolores by Captain Edward Boyer of H.M.S. Echo, who had been backed up by Admiral Duckworth. Providing an insight into departmental routine at the office of the Admiralty Secretary, Sullivan's letter dated March 6, was inscribed:

(black ink) "8 Mar What was done relative to Ad D's letter on subject?"
(red ink) She was ordered to be released Sir
(pencil) A further direction must be sent to Sir J.D. not to interrupt the trade
In proving unwilling to prosecute infringers of the Licence Trade, the Vice Admiralty Courts cannot easily be blamed. During the French Wars between 1793 and 1815, so many Orders-in-Council and Instructions were issued that it was difficult to steer a legal course between them, and it was often the Royal Navy itself which was in the wrong by misinterpreting or ignoring its Instructions. On the infrequent occasions when infringements did come before them, the Vice Admiralty Courts appear to have acted correctly, and condemned vessels when the evidence was plain. It was probably as much the reversal of such decisions on appeal which angered the Royal Navy as the actions of the Vice Admiralty Courts. Far more reprehensible was the persistent overcharging by the Vice Admiralty Courts on their bills of fees, a perennial cause of complaint by the Royal Navy throughout the period.

Even in wartime, officers of the Royal Navy were often dissuaded from prosecutions because they could not afford the very palpable risks of an unsuccessful case, which were multiplied wherever local interests were involved. Local Judges had the unfortunate habits of placing local evidence at least on a par with that of the Royal Navy, and of refusing costs for Probable Cause. Even in successful cases, the Royal Navy claimed that often the costs of prosecution exceeded the value of the prizes prosecuted. Besides this, there was the threat of the ruinous delays and expense that might follow appeals from local cases, successful or unsuccessful, in which respect, the experience of Lord Rodney with the St. Eustatius seizures of 1781 was a constant spectre to Royal Navy captains.65

65 See below, VI, 217.
Admiral Cochrane, the perennial champion of the Royal Navy interest, vigorously renewed in 1810 his campaign to reform Admiralty Court fees. In August, 1810, Sir William Scott replied to Cochrane's complaints of overcharging in the Vice Admiralty Court at Antigua in a magisterial letter to the Lords Commissioner of the Admiralty, in which he asserted that Cochrane was misinformed and inconsistent, and in laying down the law to the Admiralty Courts was stepping far outside his legal rights.⁶⁶ Unabashed, the Admiral counterattacked in Parliament in July, 1811, complaining that Vice Admiralty Courts were "nefariously conducted, and...their exertions are as destructive of energy abroad as the conduct of those in the proctors' office is of exertion at home." Producing a bill of costs "six fathoms and a quarter long", he stated that although costs were levied on a sliding scale according to the value of the prize, the minimum charges were far too high for naval officers who only had their pay to live on. The crowning indignity to His Majesty's Navy was that in some stations privateers were condemning more prizes than naval vessels, because officers of the Royal Navy were justifiably afraid of "frauds and reversals". James Stephen leaped to the defence of the Courts, backed up by Sir John Nicholl and Sir William Scott, and Admiral Cochrane did not even get a seconder to the motion he was making.⁶⁷

⁶⁶Scott to Lords Commissioner, August 13, 1810, Adm. 1/3902.

⁶⁷Cobbett's Parliamentary Debates, July 17, 1811, XX, 985-1012. Yet even the privateers complained of Vice Admiralty fees. Certain Bermudian privateers claimed in a petition in 1800, for example, that "The Expences of Courts, Law Charges &c have already swelled up to an enormous size, and but for the property that we have acquired by dint of hard exertion and perseverance from the Enemy we must have desisted this business long since"; Jennings, Tucker & Co. to John Brickwood, July 14, 1800, P.R.P. 30/42, 7/8.
Behind the scenes, the Government was probably not as confident as it made out in Parliament, and Cochrane's campaign was not entirely defeated, for later in 1811 a commission was appointed to enquire into Vice Admiralty Court fees. Yet even after the report of the commission in August, 1812, grievances remained, ironically exacerbated by the other reforms that had been carried out in the Courts. In 1814, Judge Byam of Antigua was forced to remonstrate against the actions of Admiral Durham, who had ordered all the captains under his command to carry their prizes to Barbados. "Like a Merchant sending his Vessel to the best Market", wrote Durham in his defence, "I have directed that all captured or detained Vessels should proceed, for adjudication, to that Port, where their Condemnation will be attended with least Expense."

Judge Byam could only explain, rather lamely, that it was quite understandable that the fees in the Leewards exceeded those at Barbados since the Judge at the latter Court enjoyed a salary of £2,000 and a pension, after six years' service, of £1,000 a year, which he, despite his 38 years as Vice Admiralty Judge, did not. Byam was loyally backed up by Sir William Scott, who said that Durham's order had been ill-advised; though the Vice Admiralty Judge was firmly warned by the Lords Commissioner of the Admiralty that he should be more careful over fees in future. This mild reprimand, however, was not penned until May, 1815, when the war in the Caribbean was virtually over.

68 See above, 133, n. 46.

69 Byam to J.W. Croker, December 19, 1814, Adm. 1/3902; Byam to Croker, January 27, 1815, enclosing Durham to Byam, January 3, 1815; Sir William Scott to Croker, May 16, 1815, Adm. 1/3903; Lords Commissioner to Byam, May 17, 1815, Adm. 2/1078, 479.
Throughout the period from 1763 to 1815, imperial control over the colonial Vice Admiralty Courts gradually increased, though the High Court of Admiralty jealously guarded, and even extended, its direct authority over Vice Admiralty Courts by means of co-operation and compromise with the policy-makers in the Government, and the problems of the dual responsibility of the Lords Commissioner of the Admiralty for both Courts and naval vessels were never finally resolved. The occasional concurrence between Governors, Customs officers, Vice Admiralty Judges and colonial societies, the flexibility of the law and the continued resistance of the Vice Admiralty Courts to pressures for reform, however, showed that local interests remained a powerful influence on the operation of the Courts.

The effectiveness of the Vice Admiralty Courts was not, therefore, related solely to the integration of the Courts in the imperial system; but also to the powers of enforcement and the degree of local acceptance. The Prize system during wartime was generally effective and popular in all sections—metropolitan and colonial—though some friction occurred with the Royal Navy over the activities of privateers, licensed traders and rapacious Court officials. The attempt of the imperial government to enforce the laws of trade and revenue through the Vice Admiralty Courts, on the other hand, was far less effective. Even when pursued whole-heartedly by imperial policy-makers, the success of the Mercantile System in the Caribbean depended on a numerous, keen, well-rewarded and independent force of naval, Customs and Court officials to overcome the indifferent or adverse sentiments of the majority of the local inhabitants.
Chapter Six: Caribbean Courts and the American Revolution

It should cause no surprise that the colonists of the British West Indies remained loyal during the American War of Independence. Practically none of the grievances that led the Americans into rebellion had any relevance to the Caribbean, and once the war had spread, the British West Indian colonies depended on the Royal Navy for their very life. Before the war, there was a certain amount of political sympathy felt for the Americans in Bermuda, the Bahamas and Jamaica, but the economic alienation which played such a large part in fomenting revolt on the mainland, was notably lacking in the islands. As we have already seen, the whole system of British mercantilism revolved around the sugar islands and their reciprocal trade with the mother country, and the Vice Admiralty Courts were not as severe an irritant in the Caribbean as in North America chiefly because their operations did not press hard upon West Indian planters and merchants.

The West Indian oligarchy enjoyed an influence in the British Parliament which the North Americans could not match. Through their Committee of Merchants and Planters, their tireless Agents and their influential absentees, they managed to obtain and maintain a system of protective legislation that gave them an advantage disproportionate to their numbers.¹ At a time when plantations in foreign colonies were

beginning to produce larger quantities of sugar, coffee and other
crops more cheaply than they could themselves, the British planters were
more than satisfied with a system of trade laws that, while it did not
allow them to buy and sell entirely where they pleased, did guarantee
markets protected from foreign competition. In this respect, the Molasses
and Sugar Acts—great victories for the West India Interest though of
limited effectiveness—drove a wedge between the "Creoles" who stood to
profit from them, and the "Yankees" who saw them as unwarranted imperial
impositions, attempting to make them buy in a dear market and sell in a
cheap. British merchants, likewise, gained the benefit of Navigation Acts
designed to exclude the foreign carrier, but which appeared to press with
greater rigour on North American mercantile interests than the merchants
trading to the West Indies. At the same time as the expansion of North
American industry was being cramped, and the ban on the trade in foodstuffs,
lumber and sugar between North American and the foreign West Indies was
being more strictly enforced, exporters of British manufactures to the
Spanish American colonies were given a boost by the first of the Free
Port Acts. Besides this, the 50,000 whites of the scattered British

2 The French in Hispaniola and the Spanish in Cuba in particular
were showing "untoward energy" in rivalling the British island "in which
they have succeeded to an amazing degree, so that the vast quantities of
sugar, coffee, cotton and indigo &c they send to Europe, must be of
the greatest prejudice...to our Sugar Colonies"; Governor Basil Keith,
"Queries relative to the State of His Majesty's Island of Jamaica with

3 Act of '6 Geo. III, c.49; Armytage, Free Ports, passim.
islands in the Caribbean were far more in need of the protection of the British Army and Navy than were the 2,000,000 inhabitants of the Thirteen Colonies. "Redcoats" and "Jack Tars", who were beginning to be seen as the strong right arm of revenue men and Customs officers in New England, were seen as stiffening for the threadbare militia against foreign invasion and negro insurrection in the British West Indies.⁴

The activities of Vice Admiralty Courts were one of the grievances listed in the Declaration of American Independence, yet it is worthy of note that Navigation and Revenue Act cases, which C.M. Andrews estimated comprised two-thirds of the business of Vice Admiralty Courts in the Thirteen Colonies, accounted for no more than a tenth of the business of the Courts in the Caribbean.⁵ During the years of peace before the American War, the Caribbean courts had little business because the mercantile system made it almost unnecessary for British West Indians to engage in smuggling: because they had so little business, they could not attract able or energetic officials, so the trickle dwindled to practically nothing.⁶ So insignificant, in fact, were the West Indian

⁴The constant reiteration of foreign naval and military intelligence even during peacetime and of the rumours of negro unrest, in the West Indian colonial correspondence, indicate that these were almost obsessive themes, at least with the Governors. See below, 218, n. 53.

⁵Jamaica, which accounted for roughly one-third of Caribbean Vice Admiralty business, had only about 300 Instance cases altogether, out of a total of 3,720 cases between 1763 and 1815. Above, Introduction, , n. 17; Andrews, Colonial Period, IV, 236.

⁶The Jamaican papers before 1776 are almost certainly deficient, but there are records of only 17 Instance cases for the dozen years before the American War.
Vice Admiralty Courts in the imperial system in the period immediately after the Seven Years' War, that they were completely ignored by the legislators who reformed the Courts of North America by setting up "super-courts" at Halifax, Boston, Philadelphia and Charleston in 1764 and 1768, thus providing a further grievance for the North Americans. 7

The annulment of the Stamp Act--offences against which were to have been prosecuted in Vice Admiralty Courts--removed another possible grievance which West Indians might have felt against the Courts in common with the North Americans. West Indians disliked the Stamp Act and agitated against it almost as much as did the Americans, but when the Act was abrogated, they were among the first to send messages of loyal gratitude to George III. 8 Some feelings of token sympathy were shown by West Indian legislatures for American "patriots" as a residue of the tradition of opposition to executive rule that all British colonists shared. Bermuda sent delegates to the first Continental Congress, there was a strong pro-American faction in Nassau, and on December 23, 1774, the Jamaica Assembly drafted a famous Resolution of support for the American cause. 9 But all these sympathetic moves stopped far short of

7 Ubbelohde, American Revolution, passim.

8 For example, the Bahamians, who had paraded against the stamps, passed such a motion; Craton, Bahamas, 148-9.

9 Wilkinson, Old Empire, 375; Craton, Bahamas, 156; C.O. 137/70, 30-1. Governor Keith claimed that the Jamaican Resolution was the work of certain disaffected members of the Kingston faction, who took advantage of the absence of the pro-Government, or Spanish Town, party at their up-country estates; Keith to Dartmouth, January 4, 1775, ibid., 23-4.
practical aid when the fighting broke out in 1775.\textsuperscript{10} Moreover, the Jamaican Resolution specifically accepted the right of the British Government to regulate external trade and said nothing against the Vice Admiralty Courts—even their denial of jury trial, which was one of the chief American complaints.

The disruption of trade with North America by the American revolt, however, touched the British West Indians closely, and throughout the War there were cases of West Indian colonists engaging in trade with the rebels that was technically illicit. It is almost certain that the imperial government had little idea of the all-important part that the pre-war trade between North America and the British West Indies played in the economy of both. It was not until the fighting had begun that Governor Keith sent an accurate summary of the peacetime commerce of Jamaica that showed that whereas 233 vessels were engaged in sending sugar to England and bringing manufactures in return, 299 were engaged in trade with the Thirteen Colonies, almost entirely in American vessels.\textsuperscript{11}

Generally, the American vessels, as befitted those engaged in a semi-coastal trade, were much smaller than the British engaged in the trans-Atlantic run, averaging about 75 tons and a crew of eight against an

\textsuperscript{10}Keith, for example, was able to report as early as May, 1775, "present Harmony, and happy accommodation of the Disagreement that had arisen between the different Branches of the legislature"; Keith to Dartmouth, May 16, 1775, \textit{ibid.}, 63.

\textsuperscript{11}Governor Keith's "Queries", June 13, 1775, C.O. 137/70, 88-105. Altogether the American trade with the British West Indies, may have engaged 540 vessels, totalling 38,000 tons, manned by 4,200 seamen, and worth £500,000 a year in 1774. Irving's "Report" (1786), 17-18.
average of 220 tons and crew of 16; but the Americans, mostly schooners, sloops and brigs, engaged in nearly twice as many voyages each per year. 12 In 1769, approximately 45% of the North American trade of the West Indies was with the New England Colonies--of which almost half was carried on by Massachusetts--20% was with the Middle Colonies and 35% with the Southern Colonies. 13 From all areas, the chief exports to the West Indies were provisions: fish, oil, pork, lard, cheese, candles and soap from New England; flour, bread, wheat, beef and butter from the Middle Colonies; and rice and corn from the Southern Colonies. Lumber, consisting of planks, shingles and casking, was second in importance from New England, but superceded from the Middle Colonies by dry goods, and from the Southern Colonies by tobacco, tar and turpentine. Stock, such as cattle, horses and pigs, were imported from the Middle Colonies, though mules were generally imported from Spanish South America. In return, North American vessels generally carried sugar, molasses, coffee, rum,

12 Ibid. for vessels in the British trade; analysis of all vessels tried at Jamaica, 1776-83 for American trade. Schooners accounted for 40% of vessels, sloops 23% and brigs 27%. Only 8% were ships and 2% others (chiefly snows and shallops). Subsequent years saw the decline of the sloop--once the predominant vessel--in the West Indian trade. Sloops accounted for 12% of American vessels between 1793 and 1802, against 56% schooners, and only 5% between 1803 and 1815. American vessels commonly engaged in three voyages annually, sometimes four; British vessels rarely more than two round voyages in a twelvemonth.

cotton and indigo.\textsuperscript{14}

Already before 1775, there was a considerable clandestine trade between the Americans and the foreign West Indies,\textsuperscript{15} but with the development of hostilities, the gradual opening of the foreign ports and the ban on rebel trade with the British West Indies, this became the normal pattern of American trade. Before the War, the Americans, especially from the more northerly ports, commonly sailed wide into the Atlantic, to make for one of the eastern entrances to the Caribbean, from which the prevailing winds and currents would carry them westward. On a typical voyage, a master might direct his vessel from island to island, looking for the best markets for his wares and the cheapest islands for the produce which he had been instructed to bring in return: from a landfall in Barbados or one of the British Windward Islands, northwestwards along the chain of the Lesser Antilles to the Leeward and Virgin Islands, westwards to Jamaica, and then back to the American mainland by the Windward Passage or the Florida Straits. Clandestine

\textsuperscript{14} Analysis of 96 cargoes of 1777-83 in vessels labelled at Jamaica. These are, of course, greatly simplified, though precise analysis is scarcely possible. For American trade with the West Indies before 1775, see Richard Pare's incomparable \textit{Yankees and Creoles}, Oxford, 1958.

\textsuperscript{15} The value of imports into British Caribbean ports by Americans exceeded their exports to America by at least 10\% (in the case of Jamaica by £177,000 to £160,000 a year), partly because American exports were more valuable per ton, and partly because produce could be obtained more cheaply elsewhere. By 1775, the Thirteen Colonies were only importing a proportion of their sugar and coffee from the British West Indies, perhaps as little as a half.
traders could easily call in at the ports of Hispaniola or Cuba on the return voyage; though others sailed out by Bermuda and back by the Turks, Caicos and Bahama Islands, all of which were within a day's sailing of foreign ports. After they had rejected British authority, the Americans were free to search for outlets for their provisions and lumber and to purchase West Indian produce where they could. There was therefore little incentive, and later much danger, attached to voyages to the Lesser Antilles, and the majority of rebel vessels made straight for the foreign ports of Puerto Rico, northern Hispaniola or Cuba.

As early as August, 1775, the Secretary of State was writing to inform the Admiralty that American vessels were swarming into Cape Nicholas Mole to load up with French produce, arms and ammunition, and to ask them to send orders to the Admiral on station accordingly. Within a few days, Admiral Gayton was ordered to send ships out on patrol to seize all vessels belonging to the Thirteen Colonies "except only in Cases where it shall clearly appear from their Papers or other Evidence that they are bound to or returning from some Port or Place in

16 Americans, for example, would refuse to purchase Jamaican produce, and demand to be "paid in Bills and Cash, a great part of which last, it is suspected, is often laid out at the French Islands, in the purchase of Molasses, as well as some other articles prohibited, all which, might be furnished from this Island, tho' at a less moderate expense"; Keith, "Queries", C.O. 137/70, 90.

17 John Pownall to Philip Stephens, August 3, 1775, inscribed "Ad Gayton to station ships accordingly", and William Knox to Stephens, December 8, enclosing intelligence from one Captain Reager of Ann's Planter, who found 20 American vessels at Cape Nicholas Mole on October 4; Adm. 1/4130.
Great Britain, Ireland or His Majesty's Islands in the West Indies."\textsuperscript{18}

These measures were obviously insufficient, and in April, 1776, Parliament passed the Non-Intercourse Act, which was accompanied by Instructions to the Royal Navy to seize all American vessels, and Commissions to set up Prize Courts to try American seizures.\textsuperscript{19} With some justice, it was felt that this policy bore just as hardly on the loyal West Indians as on the American rebels. The British West Indies were denied not only the chief source of the provisions and lumber without which they could not exist, but also an important protected outlet for their produce. The only alternatives to actual starvation were the complete opening of British ports to friendly neutrals, illicit trade, or the wholesale seizure of American cargoes by privateers as well as naval vessels. With or without orders, colonial Governors opened their ports, and petitioned the government to be allowed to issue letters of marque. For a time, however, these appeals fell on deaf ears. British policy—perhaps affected by disquieting reports of collusion by the Bahamians with the Americans under Ezekial Hopkins who "invaded" Nassau in March, 1776—\textsuperscript{20} appeared to

\textsuperscript{18}Rochford to Lords Commissioner, September 1, 1775; also, Additional Instructions in Dartmouth to Lords Commissioner, September 12 and 18, to immobilise suspicious vessels by unstepping masts and removing rudders, and to check on flintstones usable in muskets carried as "ballast", \textit{ibid.}

\textsuperscript{19}Act of 16 Geo. III, c.5. General Reprisals were authorised by 17 Geo. III, c.7. Lords Commissioner to Seddon, May 21, 1776, enclosing Instructions of May 2 and Standing Interrogatories authorised by the Orders-in-Council of April 25, Adm. 2/1058, 497; Commission to Lords Commissioner dated May 10, \textit{ibid.}, 492, and Warrant to Judge at Jamaica dated May 24, \textit{ibid.}, 500. Copy of Royal Navy Instructions in Pollock to Stephens, May 2, 1776, Adm. 1/4130.

\textsuperscript{20}Craton, \textit{Bahamas}, 153-6.
rely on bringing the Americans to their knees solely by mobilising the Royal Navy, which, from the beginning, harassed neutrals and uncommissioned privateers as well as illicit traders and Americans.

Royal Navy patrols were based on the chief Caribbean station at Antigua, and the subordinate stations at Jamaica and Barbados. Prizes were taken to the most convenient Vice Admiralty Courts for adjudication, and consequently, the Court at Antigua received the majority of the vessels seized by the Royal Navy while sailing the Leewards, Virgin Islands and the northern shores of Puerto Rico and Spanish Santo Domingo, that at Jamaica all those vessels seized near the approaches to the Windward Passage while trading to Hispaniola and eastern Cuba, and that at Barbados those vessels bold enough to venture towards the Spanish Main, or taken by Royal Navy captains while on their voyages out to the West Indies. The Courts unrelated to naval bases appear to have done little business at the beginning of the War: the lesser Courts of the Leewards merely adjudicating those prizes it was not convenient to carry to Antigua, the Nassau Court the few naval seizures made in the northern Bahamas, and the Court at Bermuda those vessels seized by Royal Navy ships on their way back to England that it was not convenient to carry into Halifax.

Because the bulk of American trade with the Caribbean switched on the outbreak of war from the British West Indies to Hispaniola, Cuba and Puerto Rico, it was the Jamaica Vice Admiralty Court which was by

21 Not as in Navigation and Revenue Act seizures, to the Court with jurisdiction over the area where the seizure was made.
far the busiest during the first two or three years of the War. In order to facilitate adjudication, captains when libelling vessels had to give precise details of where they were seized, and an analysis of these locations provides an accurate pattern of American trade and British naval patrols in the area, and some gauge of the effectiveness of British efforts to bring American commerce to a halt. All the vessels libelled at Jamaica in the first half of 1776 were seized in the ports or near the coasts of Jamaica itself; yet in the second half of 1776, the net was thrown wider, first to the waters off Cape Francois and Monte Christi, and then to Inagua and the northern approaches to the Crooked Island, Anegada, Turks and Caicos Passages. In 1777, the mesh was made smaller, with wholesale seizures of American vessels near the Turks and Caicos Islands, off Monte Christi and as far afield as eastern Santo Domingo and northern Puerto Rico. 22

American commerce was severely hit, but disaster was averted by the friendly attitude of the French, the Spanish and the other neutrals. Not only did the French and Spanish governors open up their ports to American trade, but they protested against the close investment of these ports by British cruisers and began to make threatening gestures with their own naval forces. Besides this, the Americans began to arm their merchantmen, to commission privateers and to provide convoys under the protection of the infant United States Navy. The Royal Navy, but a shadow of its former splendour at the end of the Seven Years' War, was increasingly attenuated. Not only had it the tasks of investing the huge American coastline and, in the Caribbean, of patrolling the outer rather

22See accompanying Maps 2 and 3.
KEY
- First Quarter
- Second Quarter
- Third Quarter
- Fourth Quarter

PATTERN OF JAMAICA SEIZURES
1776
PATTERN OF JAMAICA SEIZURES
1777

KEY

○ First Quarter
× Second Quarter
○ Third Quarter
▲ Fourth Quarter
than the closer approaches to the neutral ports, but also of grouping its cruisers into flotillas against the moderate threat of the American Navy, and into larger fleets against the growing danger of French and Spanish hostilities. Bold American privateers, supplied in French and Spanish ports, began to harass the British islands behind the screen provided by the Royal Navy, until at last the Admiralty listened to colonial clamour and authorised the issue of letters of marque to privateers, late in 1777.

Immediately it was announced that letters of marque were authorised, there was a rush of applications, which multiplied as success ensued. In Jamaica alone, from 1777 to 1783 some 120 privateer vessels were commissioned, which between them labelled 292 prizes in

23 See, for example, the petition of the Jamaican Council and Assembly following the Report of a Committee to inquire into the protection provided by the Royal Navy, which talked of "American Privateers, who have not only taken several Ships upon our Coast, but have dared to enter our Ports, and cut out some Vessels from their Moorings in sight of the Inhabitants"; October 21, 1777, C.O. 137/73.

24 There was an extensive debate as to whether Governors should be allowed to commission privateers since the Act of 17 Geo. III, c.7 authorised them, during the early months of 1777. For example, Lord George Germain to Lords Commissioner, June 12, 1777, Adm. 1/4133. Germain informed colonial Governors that the Council had approved this on July 2, 1777, and the "proper instruments" were sent out on July 22, but not received until October; Germain to Keith, July 2, and Dalling to Germain, October 19, 1777, C.O. 137/72.

25 On October 19, 1777, Governor John Dalling of Jamaica announced that he had already received "four applications for Commissions, and it is likely the number will be increased if Success should answer the expectation of the adventurers"; Dalling to Germain, ibid.
the Jamaican Vice Admiralty Court.\textsuperscript{26} Although treated with suspicion by the Royal Navy and regarded at best as a necessary evil by the government at home, the privateers radically changed the nature of the war in the Caribbean and the operations of the Vice Admiralty Courts. Gaps in the defence of the British West Indies and in the blockade of American commerce were filled, the total number of seizures was almost doubled\textsuperscript{27} and many more Courts than those related to the naval bases began to flourish.

Privateer owners were far more closely involved in colonial societies than officers of the Royal Navy, being drawn from that mercantile class so hard hit by the loss of peacetime trade. But this class carried immense local power; comprising members of the colonial legislatures, government victuallers and contractors, and prize agents for prosecutions before the Vice Admiralty Courts. Hercules Ross of Jamaica, for example, combined the multiple, and often conflicting, activities of wholesale importer, Commissary-General for the Omoa expedition of 1781 and prize agent (including young Captain Horatio Nelson amount his clients), with that of being the owner of the largest and most

\textsuperscript{26}The exact number is difficult to compute. 91 different privateers libelled 292 prizes brought into Jamaica between 1777 and 1783, but only 18 of these occur in an incomplete list in the Jamaica Archives of 55 vessels for which bail was received on the granting of letters of marque at Jamaica during the period 1779-83. 120 is: (65-18) + (91-18); though the non-Jamaican privateers which libelled prizes at Jamaica should be deducted and those commissioned before 1779 which did not libel any at Jamaica should be added.

\textsuperscript{27}At Jamaica, the number of vessels libelled by privateers was only 30.7\% of the total, but the proportion was probably nearer 50\% overall, at least until many of the privateer bases fell to the French and Spanish in 1781 and 1782. See below, 218-19.
successful flotilla of privateers in the Caribbean. Ross owned at least ten privateer vessels, which between them labelled 78 prizes; the three successively named Gayton and the two called Hercules bringing in no fewer than 51.\(^{28}\)

Such owners as Hercules Ross—and he had many counterparts among the Tuckers and Trotts of Bermuda and the Christies and Symonettes of the Bahamas—obviously preferred to prosecute their prizes personally in their familiar local Courts. Colonial seafarers preferred to defend their native islands rather than venturing far afield, and their vessels, being smaller, of shallower draught and less heavily armed than most of the ships of the Royal Navy, were more suitable for a narrower radius of operations.\(^{29}\) Moreover, privateers operated best in areas

\(^{28}\) Vice Admiralty records, Jamaican Archives, 1777-83. There is also among the papers of the Helena, Vrolyck (J.V.A. 553), sent in by H.M.S. Hound, McNamara, on January 31, 1780, evidence that Ross was not above engaging in illicit trade as well.

\(^{29}\) Hercules Ross, however, did send Andrew McNeill in the Hercules, in company with three other vessels, to search the waters around Curacao and Aruba, early in 1781. Of Jamaican privateers, 31% were ships averaging 164 tons displacement, 11% brigs averaging 90, 18% sloops of 40, and 40% schooners of 21. The most detailed account of the ideal privateer occurs in C.O. 137/73, 266, specifying a small brigantine, with a 55-foot keel, 20-foot beam and 5 1/2-foot hold. She should have a flush deck, deep waist, long hatchways, fore and aft scuttles and a 12-foot roundhouse; shallow main keel and stapled false keel; lofty lower masts with tops, and a bowsprit "not too sleeve". The brigantine should carry "every possible sail with lightish canvas", cranes oars, a full set of cables and three spare anchors; a capstan, large boat, canoe and two dories. The armament should be 18, 12-pounder carronades and as many swivels as possible ("very useful on coasts and banks"); the crew, at least 40 men. These specifications indicate a small but fast and heavily-armed vessel, highly suitable for waters inclined to shoal and winds likely to be variable or contrary.
where competition from the Royal Navy was lightest; therefore, although the Courts of Jamaica, Antigua and Barbados prosecuted a fair number of the seizures made by privateers, many of the smaller island with Vice Admiralty Courts came into their own as privateering centres after 1777. The lesser Courts of the Leewards--St. Kitt's, Nevis, Montserrat, Dominica, Tortola--began to receive a steady flow of privateer business, which reflected a moderate prosperity for the islands which they served. The non-plantation colonies of Bermuda and the Bahamas, however, enjoyed a period of relative affluence. Both colonies, which had an active shipbuilding industry and a large seafaring community put out of business by the ending of legitimate American and the unprofitability of illicit trade, now became almost exclusively privateering bases. No longer were the Americans practically inviolate in the mid-Atlantic reaches and the Bahamian shoals where the Royal Navy did not, or could not, patrol. But these privateering bases, without Royal Navy protection, were as vulnerable as they were dangerous, as Nassau was to find when captured by the Spaniards and Americans in 1782.

After 1777, the ubiquity of British cruisers and the promptitude of their attendant Vice Admiralty Courts in condemning seizures, stifled American trade, but also increased friction with the neutrals. The French

30 Dominica, for example, sent its first returns, reporting six seizures by privateers, in December, 1777; John Wilson to Philip Stephens, Adm. 1/3884. The prosperity was distributed by the sale of condemned cargoes cheaply and by the market in condemned vessels.

31 Craton, Bahamas, 158-9.
in particular resented the impediments placed in the way of the American trade with Hispaniola and the seizures of French vessels carrying cargoes allegedly contraband into American ports, and it was a series of specific complaints against British naval vessels and privateers contributed to the outbreak of war between Britain and France in August, 1778. As early as February, 1776, there were French complaints of the activities of British cruisers off the coast of Hispaniola, though the British agent Charles Cobb explained to "Count Denry" (Le Comte d'Ennery), the Governor of Hispaniola, "that the Meaning of our Cruizers being out in search of them was to Prevent their supplying his Britannic Majestys Undutiful Subjects with the means of carrying on this unnatural Rebellion. That we were well convincd that the French Merchants supplyd them with Arms & Amunition. I myself haveing seen some English seamen carrying Firelocks out of a Store into there boat."32 Three months later, the French Governor complained that the British blockade had practically brought Hispaniola to the brink of starvation, though his plea for a supply of corn from Jamaica was turned down by Governor Keith on the grounds that Jamaica was in little better plight itself. Lord George Germain, in typical metropolitan style ignoring colonial sensibilities, criticised Keith for his un-neighbourly action, warning him of the dangers of an international rupture brought about by the natural antipathy of the Jamaicans for the French in Hispaniola.33


33 d'Ennery to Keith, May 7; Keith to Germain, May 20; Germain to Keith, August 7, 1776, C.O. 137/71.
A far more potent cause of conflict existed, however, in the trade carried on by the French with the rebel colonies. France refused to accept the validity of the Non-Intercourse Act in international law, and until the Reprisals Act came into force in 1777 claimed that the Rule of 1756 did not apply because the Americans were technically not belligerents and therefore no state of war existed. Nonetheless, the French tacitly accepted the principle that even if war did not exist, they could not trade with the Thirteen Colonies because of the provisions of the British mercantile system, and entered into the subterfuge of clearing cargoes intended for the rebel colonies for Miquelon, a barren speck of land near Newfoundland that had been retained by the French in the Treaty of Paris in 1763. Le Comte d'Ennery, for example, made a complaint in May, 1776 of the capture of the French ship La Sirène en route from Hispaniola to Miquelon, and its subsequent condemnation at Jamaica, only to be told by Governor Keith that there was nothing he could do about it. Not only had the vessel been taken by a ship of the Royal Navy over which he had no control, but it had been properly condemned in the Vice Admiralty Court, over which he had even less influence. All in all, at least eight French vessels were condemned in Jamaica between 1776 and August, 1778 for being falsely cleared for Miquelon, 15 for contravening the Non-Intercourse Act, ten for carrying American property and five for

\[34\] Ibid., 195.
carrying contraband of war. 35

By the middle of 1778, diplomatic channels were clogged with French complaints of British seizures and the prompt and unvarying condemnations by Caribbean Vice Admiralty Courts, 36 and in the Caribbean itself the situation had deteriorated so far that a savage unofficial war was going on between the British cruisers and privateers that while ostensibly American, were supplied and often manned by the French. In January, 1778, Governor Keith replied to yet another complaint from the French Governor of Hispaniola that

the impediments given to your Commerce, I am afraid considering the Times, and the Cloak so kindly lent to that of our Rebels, must occasion some little stoppage, now and then to the fair Trader: but what are your disquietudes, and Vexations, to our real Captures and plunderings, to the ruin of many a wretched family by nominal Rebel Privateers? How have our Coasts throughout the whole West India Islands been infested by such piratical Interlopers? manned not with our European Subjects, not with those Rebels who were our Subjects, but totally with French Men, French Negroes and French Molattoes; not fitted out in rebel Ports, but in French ones, not by American Rebels, but by French Merchants. 37

35 Miquelon trade: La Marie, J.V.A.8; L'Elizabeth, J.V.A.11; La Pacifique, J.V.A.35; La Marie Anne, J.V.A.36; La Jeune Bébé, J.V.A.42; La Saint Esprit, J.V.A.43; L'Aimable, J.V.A.57 (all 1776); Le Saint Louis, J.V.A.116; La Belle Magdalene, J.V.A.148 (both 1777). Non-Intercourse Act: J.V.A.10 (1776); J.V.A.106, 125, 131, 139, 155, 169, 172 (1777); J.V.A.229, 231, 255, 256, 296, 300, 306 (1778). American cargoes: J.V.A.2, 11, 36, 43, 53, (1776); J.V.A.85 (1777); J.V.A.231, 284, 293, 334 (1778). Contraband: J.V.A. 109 (muskets); 169 (sulphur); 266 (gunpowder); 283 (sailcloth); 341 (medicine, needles).

36 For example, Lord Weymouth to Lords Commissioner, May 5, 1777 (La Jolie Coeur), Adm. 1/4133; ditto, January 29, 1778 (L'Aimable Reine), Adm. 1/4135; ditto, February 6, 1778 (Le Revanche, Le Bon Pasteur, De Manneville Pompée, L'Espérance, L'Amitie), ibid.

37 Keith to d'Emnery, January 31, 1778, C.O. 137/73, 114-5.
The British naval forces blockading the Americans and the French forces protecting French merchantmen edged closer towards open hostilities, until in May, 1778, the Royal Navy seized the French frigates Pallas and Licorne and the cutter Coureur. On June 28, 1778, the French government ordered general reprisals against the British, and the Maritime War had begun. 38 Within a few weeks, Commissions for Prize Courts and letters of marque against the French were sent out not only to those colonies where the Vice Admiralty Courts were already operating against the Americans, but to East and West Florida, Grenada and St. Vincent as well so that the chain of Caribbean Courts was more complete than it had ever been before. 39

Spain had neither the power nor the will to follow France immediately into the Maritime War, and when she did declare war against Britain she pursued hostilities with considerably less than the élan of French. Spain's naval power, while not unimpressive on paper, lacked effectiveness; based on Havana, it was not easily mobilised for action to windward in the Caribbean proper, and was constantly starved of supplies.

38 See orders to Governor of Martinique and French statements as to official commencement of hostilities (June 17, 1778) in Pigott and Omond, Armed Neutralities, 81-3.

39 Commissions for Prize Courts and letters of marque against the French, following the Orders-in-Council of August 5, 1778, were sent out the same day to East and West Florida, Bahamas, Jamaica, Barbados, Leewards, Grenada, Dominica, St. Vincent and Bermuda; Adm. 2/1059, 358, 362. The Floridas, Grenada, Dominica and St. Vincent had been acquired by the Treaty of Paris in 1763, and though Vice Admiralty Courts had been set up at Pensacola, St. Augustine, Dominica and Grenada in 1764, and a Prize Court against the Americans had been erected at Dominica in 1776, the Prize Courts set up in 1778 in the Floridas, Grenada and St. Vincent were new. See above, I, 40, n. 139.
Besides, the mercantile power of Spain was weak and vulnerable. Having few plantations, little industry at home and a negligible merchant marine, Spain relied largely on foreign commerce even for the supply of her own colonies, and she consequently was in no position to supply the beleaguered Americans. Spain, therefore, had fewer grievances than the French over the interruption of her commerce by British cruisers, and stoppages and seizures by the Royal Navy and privateers accounted less for the Spanish declaration of war in June, 1779 than the Family Compact alliance of the Spanish with the French and the determination of the Spanish government to revenge the defeats of the Seven Years' War. 40

The Spanish contribution to the fighting in the Caribbean was as meagre as might have been expected, consisting chiefly of the nuisance of Spanish privateers operating out of Santiago and Baracoa in Cuba and the ports of the Spanish Main. The Spanish fleet lay bottled up in Havana for most of the War, venturing out only in 1782 for the capture of two of the weakest British bases, Pensacola in West Florida and New Providence in the Bahamas. 41

40 Complaints by the Spanish Ambassador included that concerning the Sainte Barbe, found trading between Cuba and Philadelphia in 1777, and the seizure of two packet boats, the Prince de Asturias and the Colon, later in the same year; Weymouth to Lords Commissioner, April 8, 1777, Adm. 1/4133, and January 31, 1778, Adm. 1/4135.

41 News of the Spanish declaration of war was sent by Lord Weymouth to the Lords Commissioner of the Admiralty on June 16, 1779, with a request to order Sir Charles Hardy and all naval commanders to seize Spanish vessels. This was inscribed in the Secretary's office: "Sent same day 10 p.m"; Adm. 1/4139.
Now that the chief belligerents of the Seven Years' War had renewed their conflict in the Caribbean, many of the patterns established between 1756 and 1763 were duplicated. From time to time, the major fleets of Britain and France maneuvered for advantage among the islands of the Lesser Antilles; but for three years, the crucial battle that would settle the fate of the Caribbean did not materialise. For most of that time, the smaller stationed ships of the Royal Navy and the numerous British privateers were able to dominate the commerce of their enemies, so that it was only carried under great difficulties, and with the co-operation of the remaining neutrals.

Royal Navy ships based on English Harbour, Antigua, patrolled in an arc stretching 100-150 leagues out into the Atlantic for vessels coming to the Caribbean from Europe, carrying their seizures to the Vice Admiralty Court at Antigua for adjudication. The ships stationed at Carlisle Bay, Barbados, and employing the Vice Admiralty Court at Barbados, being less numerous, patrolled in a much narrower arc of 40 to 50 leagues to windward for those vessels entering the Caribbean from the direction of South America and the South Atlantic. The ships based at Port Royal, Jamaica, were busiest of all, covering three main areas: the waters around the Windward Passage, and the southern shores of Hispaniola, Santo Domingo and Puerto Rico, which the enemy vessels hugged hoping to avoid detention; the wide easterly sea lanes between Jamaica and the Honduras coast; and the narrow strait between Cabo Corrientes in Cuba and Cabo Catoche in Yucatan, which provided the main exit from the Caribbean. Captures made to the north, south and east of Jamaica were generally carried into the Vice Admiralty Court at Jamaica, but those made to leewards were quite often
taken to Pensacola, St. Augustine and Nassau, or even as far afield as Bermuda, Halifax or New York. North of the Florida Straits, the North American Fleet, generally far larger during this war than that in the Caribbean, took over, blockading the American coast and carrying its captures into Halifax, Bermuda or the Loyalist port of New York.42

The Royal Navy took the responsibility of patrolling the wide reaches of the open sea: the privateers roamed the difficult gaps amid the myriad islands and shoals; among the Spanish Leeward Islands, the Grenadines, the British Leeward and Virgin Islands, and throughout the Bahamas. The Royal Navy generally took the larger and more valuable vessels; though in periods when the threat of enemy concentrations or the exigencies of strategy demanded that the ships of the Royal Navy stay together as a fleet or leave Caribbean waters (each year during the summer months, for example, Royal Navy vessels preferred to patrol more northerly waters, away from hurricanes and disease) the number of captures libelled by privateers exceeded those libelled by His Majesty's ships, even at Jamaica, the only station shared by the Royal Navy and privateers to any extent.43

42 Compare with the patterns of patrols during the Seven Years' War described by Richard Pares, War and Trade, 292 sqq.

43 During the first quarters of each year between 1776 and 1783, 303 vessels libelled at Jamaica were seized, during fourth quarters, 266, second quarters, 243 and third quarters, 142. See below, 222, and for greater detail, Appendix H.
Of the neutrals who proved eager to carry on trade with the belligerents, the Dutch were the most prominent, though the Danes and Swedes were also very active in the Caribbean. At first, the neutrals sailed quite openly to and from French and Spanish ports, carrying supplies and produce on their own account; but when the British Vice Admiralty Courts applied the Rule of 1756 with greater asperity during 1779, and the British Admiralty in 1780 declared a blockade of French and Spanish ports similar to that applied to the American coast between 1776 and 1777, the subterfuge of ports of convenience began to be re-employed. Strategic neutral islands, most of which in peacetime enjoyed no trade at all, mushroomed into temporary prosperity as ports where goods could be trans-shipped, and belligerent traders could take out burgher papers for themselves and neutral registration for their vessels from the compliant local authorities. During the year that France was at war and Spain at peace, Monte Christi—close to the border between Spanish Santo Domingo and French Hispaniola—repeated the function that it had performed for most of the Seven Years' War; but by 1779, the Dutch islands of Curacão, Aruba, Bonaire, St. Eustatius, Saba and St. Martin had taken over the trans-shipment trade, which reached such huge proportions that roadsteads which

44 See Lord George Germain to Lords Commissioner, January 23 and 25, 1780, in which the Admiralty was requested to order Admiral Parker to warn neutrals that a state of blockade existed in the French islands and Puerto Rico; Adm. 1/4141.

45 Pares, War and Trade, passim.
had been deserted during peacetime were reported crowded with hundreds of vessels.46

During 1778, great care was exercised that Holland was not antagonised by the molestation of Dutch vessels by the Royal Navy,47 but as part of the accelerated tempo of operations against France, Spain and the United States, severe measures were taken against Dutch carriers during 1779 and 1780. Royal Navy ships were ordered and privateers advised to bring in all suspicious Dutch vessels, and the Vice Admiralty Courts were instructed to proceed against them as against Americans.48 Dutch complaints were to no avail, and in December, 1780, Holland joined in the alliance against Great Britain. Immediately, general reprisals were ordered against the Dutch and Vice Admiralty Courts empowered to try all Dutch vessels as belligerents.49

As had happened during the Anglo-Dutch Wars of the seventeenth century, Dutch commerce suffered severely during the war with Great Britain.


47 See Lord Suffolk to Lords Commissioner, September 29, 1778, an order to release all Dutch vessels taken by H.M. ships, and to be much more careful in future; Adm. 1/4135. This folio is full of Dutch complaints and correspondence relating thereto.

48 Lord Stormont to Lords Commissioner, January 8, 1780, Adm. 1/4141.

49 Ditto, December 20, 1780, Adm. 1/4143; contains a Commission under the Great Seal for the Lords Commissioner to issue letters of marque against the Dutch, copies of the orders for General Reprisals and specific orders for Royal Navy vessels. Also, ditto, January 1, 1781, Adm. 1/4144.
CARIBBEAN PORTS OF CONVENIENCE
1778-1783 and 1793-1815

KEY
- Dutch
- Danish
- Spanish
- Swedish
The aid that Holland had expected for her commerce in the Caribbean from the French navy materialised, but indirectly and fortuitously. Early in 1781, St. Eustatius fell to Admiral Rodney and General Vaughan with a tremendous booty in captured vessels, but nearly all these were recaptured by a French squadron while being convoyed to England. Curaçao and its neighbouring islands survived until 1782, but their trade had been destroyed by the Dutch declaration of war in December, 1780.

After 1780, only Denmark and Sweden remained as neutral Caribbean powers, and Danish St. Croix and St. Thomas and Swedish St. Bartholomew became the chief Caribbean ports of convenience. A large proportion of their customers and inhabitants were Americans masquerading as neutral citizens with the connivance of the Danish and Swedish authorities. An American living in St. Thomas wrote to a friend in May, 1782, for example: "We honest Danes now enjoy every liberty of Commerce, as far as consistent with Treaties, & if you had property to load the Brigg up with the most valuable Cargo, we need be under no Apprehension of Capture." No St. Thomas vessels were condemned—at least in Jamaica—

50 Jameson, op.cit.

51 James Blair, in the papers of the Daphne, Rea (J.V.A.797), taken by H.M.S. Alarm, Cotton, off Isle la Vache on June 3, 1782, on a round voyage from St. Thomas via Curaçao and Aux Cayes. Blair was part owner of vessel and cargo with one Joseph Seavright of St. Thomas. Vessel and cargo were acquitted on August 31, 1782, having been libelled as French property. See also, J.V.A. 865, Polly, Oliver, which includes an application for "false Danish registration papers and a burgher's brief; and J.V.A. 874, Rover, Sutter, which includes arrangements for "colouring" cargoes from South Carolina after the British evacuated it, and a St. Thomas Muster Roll of the crew listing one "Danish Burgher" and 11 "Italians", all with suspiciously English-sounding names (both 1782).
until December, 1782, but the immunity of Danish and Swedish ports
of convenience was due less to the ingenuity of those using them than
to the fact that Britain was too weak to risk antagonising further the
Armed Neutrality which Denmark and Sweden had helped to create in order
to protect their commerce. 52

The two years after the Dutch declaration of war and the form-
ation of the Armed Neutrality were critical for the British in the
Caribbean as elsewhere. The unfavourable course of events on the
American mainland leading up to the Yorktown debâcle, the threatening
gestures of the French fleets and the growing harassment by the United
States Navy, deprived the British West Indies of the protection of the
Royal Navy for much of the time. Privateers continued to capture prizes,
but were inadequate to defend islands and protect commerce, and British
merchantmen became vulnerable to French, American and even Spanish
corsairs. British convoys were no longer predictable or predictably safe,
and the sugar islands could neither export produce nor import provisions
with their accustomed regularity. Merchants, as usual in difficult times,
complained of beggary, and in some islands actual cases of starvation
occurred among the negroes. Particularly in Jamaica dwindling supplies,

52 See, for example, Stormont to Lords Commissioner, September 13,
1780, Adm. 1/4143, and Additional Instructions dated September 15, 1780,
Adm. 1/4144. For other Danish complaints concerning the St. Thomas trade,
see Suffolk to Lords Commissioner, November 20, 1776, Adm. 1/4130; Adm.
51/457, 3B (log of H.M.S. Hind, 1775-6); Suffolk to Lords Commissioner,
May 9, 1777, Adm. 1/4133; C.J. Fox to Lords Commissioner, June 20, 1782,
Adm. 1/4148 Lord Grantham to Lords Commissioner, November 2, 1782, Adm.
1/4149; Fox to Lords Commissioner, November 4, 1783, Adm. 1/4150.
negro unrest and rumours of impending invasion produced feelings amounting to panic among the white inhabitants, and Governors wrote despatches that both berated the Admirals for leaving the islands defenceless and begged the Admiralty to send them aid.53

The nadir of British fortunes in the Caribbean occurred late in 1781 and early in 1782 when the French recaptured St. Eustatius and took over St. Kitt's, Nevis, Montserrat and Tortola to add to their earlier captures of Dominica, St. Vincent, Grenada and Tobago, and the Spanish took Pensacola and New Providence with the help of the Americans. With most of these captures, a privateering base and its attendant Vice Admiralty Court was extinguished; and except for East Florida and Bermuda, only the Vice Admiralty Courts of the naval bases of Antigua, Barbados and Jamaica remained in British hands. At the eleventh hour, the dramatic victory of Rodney over de Grasse at the Battle of the Saints in April, 1782, reversed the tide in Britain's favour, and by the end of the War, all the lost islands had been restored. The Prize Courts in the reconquered islands, however, were not revived, and after the glorious day on which eight French ships of the line taken at The Saints were towed into Port Royal

53 For famine and negro scares, see Governor Dalling to Lord George Germain, August 19, 1782, C.O. 137/81. For invasion scares, ditto, November 24, 1781, ibid., 82. Ships officially stationed at Jamaica totalling 20 in 1780 fell to 18 in 1781 and most of 1782, though by the end of 1782 there were 26 and by 1783, 42; Jamaica Almanacks, 1780-83.
to be condemned in the Vice Admiralty Court of Jamaica,\textsuperscript{55} the
British cruisers and Courts did not quite recapture the successes of
the earlier years of the War. Nonetheless, the War ended with a powerful
British position in the Caribbean, to offset the disasters of the mainland
campaigns in the bargaining over the terms of peace at Versailles.\textsuperscript{56}

A complete set of records for the Caribbean Vice Admiralty Courts
would be of inestimable value in detailing the patterns of the Maritime
War and gauging the effectiveness of the Prize Court system; but as it is,
only Jamaica has a full and well-calendared set of records from which
data can be derived. The Court of Jamaica, however, was not only the
most sophisticated but also the most successful, and, with certain
reservations, an analysis of its papers can be used to evaluate the
wartime functions of the Caribbean Vice Admiralty Courts in general.\textsuperscript{57}

Altogether, no less than 936 prizes were libelled in Jamaica
during the American and Maritime War, an average of 125 for each of the
7 1/2 years of war. Except for the first and last years, the annual
rate of captures was remarkably even, varying only from 112 to 153. The

\textsuperscript{55} J.V.A. 822-5, L'Ardent, La Ville de Paris, Le Glorieux, Le Hector,
captured by H.M.S. Formidable and the rest of Rodney's fleet on April 12,
1782; and J.V.A. 848-51, L'Aimable, Le Jason, Le Caton, La Ceres, captured
by H.M.S. Magnificent and Hood's squadron, on April 19, 1782. See Jamaica
\textsuperscript{56} For orders relating to the cessation of hostilities, see Townshend
\textsuperscript{57} See accompanying table of cases, 1776-1783.
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least productive year was 1780, when the neutral carrying trade was at its peak and the Royal Navy was more concerned with activities around the Lesser Antilles than in Jamaican waters. The following year, which was one of greater adversity for the British, actually saw an increase in Jamaican prosecutions, though this can be accounted for by the seizure of so many other Vice Admiralty Courts by the French, particularly the fear that Antigua would go the way of the other Leeward Islands.

Breaking the prosecutions down into those made by Royal Navy ships and privateers, it can be seen that, although letters of marque were not issued until late in 1777, privateers quickly asserted their importance, accounting for 38% of the prizes brought into Jamaica in 1778 and actually outpacing the Navy in 1779 and 1780 by 148 prizes to 101. Privateers maintained their rate of captures in 1781, but once the Royal Navy reasserted its power in 1782, privateer successes declined sharply, and dwindled away to nothing before the War ended.

The most significant trend detectable in the Jamaican figures, however, is seen when the nationality of prizes libelled is analysed; a trend amounting almost to a "Law of Caribbean Escalation". It seems that the predominant naval power tended to force the trade of its enemies into neutral channels; then, applying pressure to the neutrals through its cruisers and Courts, it provoked them, progressively, into war, until either hegemony was achieved or it was forced to desist by the combination of the powers not aligned against it. For the first 2 1/2 years after the establishment of the British Prize Courts, the vast majority of the prizes prosecuted at Jamaica--approximately 79%--were of American nationality;
but as the War progressed, the number of American vessels prosecuted fell from a peak of 77 in 1777 to a minimum of 18 in 1780, as American trade with the Caribbean was either stifled or forced into neutral vessels. For the first 2 1/2 years of the War, nearly all the remaining prosecutions—some 15%—were of French vessels engaged in trade that was regarded by the British government and Vice Admiralty Courts as illegal. The resulting condemnations, as we have seen, were factors contributing to the French involvement in the War.  

The outbreak of war with the French was characterised by a spate of condemnations at Jamaica, followed by a steady decline in the number of French vessels libelled, from a peak of 21 in the last quarter of 1778 to a total of 18 for the whole of 1780, as the French also allowed their Caribbean trade to be carried in neutral vessels. Spanish and Dutch prosecutions at Jamaica, significantly, did not begin until the outbreak of war with the French. The Spanish did not suffer many condemnations at Jamaica before they declared war in alliance with the French and Americans, and even after June, 1779, a small spate of seizures was followed by only a moderate, if steady, level of prosecutions. The neutral Dutch, on the other hand, underwent a greater number of trials even than the belligerent Spanish, before being goaded into war in December, 1780; and

58 Above, 205-209.

59 The connivance at a certain amount of trade with the Spanish even during wartime, mainly in flag-of-truce vessels, was a contributory factor here. See, for example, the extensive correspondence on Eliphalet Fitch and the flag-of-truce trade between Kingston and Havana in 1781, in C.O. 137/84 (1784).
in the first year of their belligerency they provided 30% of all prizes libelled at Jamaica, compared with 33% French, 22% American and only 11% Spanish. Danish and other neutral vessels scarcely appeared before the Jamaica Court, though by 1782 some efforts were made to prosecute vessels engaged in the disingenuous trade of St. Thomas.

The figures derived from the records of Jamaica clearly indicate that the pattern of the naval and commercial war can be delineated quite accurately from the pattern of prosecutions before Vice Admiralty Courts. We have already seen that the Jamaican Court was extremely prompt in its decisions, averaging 51 days from seizure to decree throughout the American and Maritime War; but before deciding finally that the Vice Admiralty Courts were direct agents of British policy during wartime, we should also examine their record as to condemnations and appeals. Of the 936 prizes libelled before the Vice Admiralty Court of Jamaica between 1776 and 1783, no less than 758 were condemned outright, 74 partly condemned and 48 decreed as recaptured British vessels. Only 37 prizes, or 3.9%, were wholly acquitted. The record of appeals is even more remarkable: a mere 13 decisions of the Jamaica Judge were appealed to London—1.4% of the total—and even then, several of those were appeals against acquittals. Whereas a high rate of condemnations and a low percentage of appeals might indicate a cautious policy of detention by patrolling cruisers, these figures—especially when compared with those for 1793-1815—argue strongly for the belief, commonly held by the neutrals

60 Above, 11,

61 Acquittals, 13%; Appeals, 17%. See below VIII,
as well as the belligerents during the American and Maritime War, that British Vice Admiralty Courts were little but a branch of the executive arm of British wartime policy.

In the Caribbean, British policy had originally been to bring the rebellious Americans back to their allegiance by crippling American commerce. But the policy had misfired, merely accelerating a tendency by the Americans to extend their commerce beyond the cramping bounds of the British Empire, and providing the French and Spanish with a pretext to revenge themselves for the defeats of the Seven Years' War. By the time Holland had entered the War and Russia, Denmark and Sweden had formed the Armed Neutrality, an internal dispute over the preservation of an imperial system had become (in the British West Indies) a struggle for self-preservation.

The Vice Admiralty Courts played no greater part in the framing of policy between 1775 and 1783 than they had between 1756 and 1763, but at least as important a part in carrying it out. To the extent that they helped in the fight of the British West Indies for survival, and brought profits to the mercantile community, by promptly condemning captures, the Courts were popular in the colonies during the War. But when the loss of the Thirteen Colonies was followed by a determination on the part of the British government to tighten the imperial system for the remaining colonies, the British West Indians--hardest hit by the loss of North American trade and by the change in status of the Americans from fellow citizens to trade rivals--began to complain of the same grievances against the Vice Admiralty Courts that had helped to motivate the Americans towards rebellion ten years earlier.
Chapter Seven: Caribbean Courts and British Mercantilism, 1783-1793

Contrary to some interpretations, the American War of Independence did not destroy the British Mercantile System, but merely constituted a successful attempt by the Thirteen Colonies to be released from its statutory bonds. It is true that a controversy raged in England between the conservatives represented by Lord Sheffield and most of the professional civil servants, and the theorists in Lord Shelburne's circle who believed in "trade not dominion"; but after defeat in the American War, it was the mercantilists who won the first campaign in the war of words. Yet freedom from British statutory regulation did not mean that the Americans were free in fact to trade everywhere they pleased. After the Treaty of Versailles, French and Spanish ports did not all remain open to the independent Americans, and British West Indian markets regained much of their pre-war attractiveness to Yankee traders—all the more so because

1 As Edward Gibbon wrote of his patron, Lord Sheffield's Observations on the Commerce of the United States, "the Navigation Act, the palladium of Britain, was defended, and perhaps saved, by his pen; and he proves, by the weight of fact and argument, that the mother-country may survive and flourish after the loss of America." The "free trade" school represented by Josiah Tucker and Adam Smith, was amply countered by George Chalmers and David Macpherson, as well as by Lord Sheffield. V.T. Harlow, Foundation, I; A.L. Burt, The United States, Great Britain and British North America from the Revolution to the Establishment of Peace after the War of 1812, New Haven, Yale, 1940, IV, 55-70.
the Americans continued to obtain most of their manufactures from Great Britain, and the West India trade was a much-needed source of sterling credits. British Creoles, dissatisfied with the efforts of Irish and British North American suppliers to fulfill their needs, also looked to the Americans to renew the pre-war trade in cheap provisions and lumber.

The Orders-in-Council and Navigation Acts of 1783 to 1788, especially when enforced by a reinvigorated Customs service and zealous officers of the Royal Navy and Vice Admiralty Courts, therefore led to a deterioration in the relations between the metropolis and the British West Indian colonists, who saw their accustomed advantages swept away by the war and the revived Mercantilism which followed. The power of the West India Interest was waning, or rather, that of the planter half of the merchant-planter dichotomy. What the planters wanted was a renewal of the favourable conditions they had known before 1775: the enjoyment of cheap provisions, readily accessible luxuries, and protection for their sugar. All they got, it seemed as a result of the American War, were restrictions against the Americans, a new zeal against smugglers, and the gradual whittling away of the protective sugar duties. After 1783, whatever imperial regulations were imposed appeared to be almost exclusively for the benefit of "the Manufactures, the Commerce, the Revenues and the

2Leading up to the Acts of 26 George III, c.60, 27 George III, c.7 and 28 George III, c.6.
Naval Power" of Great Britain, and no longer for the protection of the sugar industry nor the benefit of the faithful West Indian colonists.

The only tolerable aspect of the post-war commercial scene for the British West Indian plantocracy was the fact that the new Mercantilism was not much easier to enforce in the British West Indies than its counterpart had been in the Thirteen Colonies. Royal Navy captains and Customs officers were few, and their zeal encountered many pitfalls. Patrolling vessels could quite easily be evaded, and inquisitive officers could be balked and sometimes bribed. Vice Admiralty Courts, besides, did not facilitate Mercantilism. They willingly prosecuted cases brought before them, but could not drum up business. On the contrary, their delays and charges made them almost as unpopular with officers of the Royal Navy and Customs service as with the infringers brought before them. Only the imperceptible erosion of the Old Colonial System from the policy-making end and the renewal of war in 1793, preserved peace between metropolis and colonies and between merchants and planters, and saved the Vice Admiralty Courts from extinction as well as obloquy.

With the fall of the Shelburne Ministry in February, 1783, the project of a commercial treaty with the United States, to be incorporated

3 Thomas Irving, "Report... upon a Correspondence refer'd to him, between the officers of the Navy and the Civil Officers of the West Indies", 1786; B.T. 6/75, 743–61 (747); Add. MSS 38345, ff. 208-13 (210); Grenville MSS at Boconnoc, 4. The conflict of interests best shown in the 1783 debates, in which the West India Interest was in favour of the American trade, and the "Shipping Interest" was against it. The prevailing sentiments were expressed in the powerful voices of Lords Auckland, Hawkesbury and Sheffield. Burt, United States, 56-60.
in the treaty of peace, was doomed. The absolute ban on American
trade advocated by some did not materialise, but the Order-in-Council
of July 2, 1783 allowed only the import of specified provisions and lumber
from the United States in British vessels, and by later Orders preference
was given to importations from Ireland and British North America.4 The
Order of July 2, 1783 was extremely unpopular in the British West Indies,
particularly since the ending of the War had been followed by a springtime
flood of cheap American goods, allowed in by colonial Governors. Most of
the colonial legislatures drafted petitions of complaint, and the West
India Committee, under the chairmanship of Lord Penrhyn, besieged the
Council with arguments supported by reams of impressive statistics.5 Yet
the Government was determined that the commercial divorce between America
and the British West Indies should be as absolute as was practicable.
Governors were severely criticised on the numerous occasions when, in
answer to pleas from local interests, they opened colonial ports to foreign

4 Fish and meat could not be imported from the West Indies, nor
provisions from the foreign West Indies, and the re-export of American
provisions and lumber from British North America was also quashed. Burt,
United States, 61-2.

5 For example, Lieutenant Archibald Campbell of Jamaica to Lord
North, November 26, 1783, enclosing a Memorial of the Assembly dated
November 20, 1783, P.R.O. 30/8, 352, ii; Governor Thomas Shirley of the
Leewards to North, November 17, 1783, enclosing a Memorial of the Assembly
dated October 9, 1783 and Report of a Committee to enquire into Custom
House Fees, ibid., 348, i; Abstract of Evidence for Report of West India
Committee to Committee of the Privy Council, May 31, 1784, ibid. The
Pitt Papers (P.R.O. 30/8) for 1783-90 contain much relevant West Indian
statistical data provided by the West India Interest.
vessels on the pretext of famine, fire or hurricane; fresh Customs officers—many of them Loyalists displaced for their former zeal—were sent out to the West Indies; and naval commanders were given stricter Trade Instructions and reminded of the generous provisions for Royal Navy seizers granted in 1764. Most Vice Admiralty Judges needed no such exhortations to enforce the Laws of Trade. The ending of the War and the cessation of Prize Court business had threatened them with penury, but the persistent presence of the Americans and the willingness of colonial merchants to engage in every profitable type of illicit trade provided the Judges with a chance to maintain the style to which the War had made them accustomed.

The years between 1785 and 1793 saw a far greater volume of prosecutions for smuggling, false registry, faulty papers and other infringements than had been known before in the Caribbean. At Jamaica the rate of prosecutions for Navigation and Revenue Act offences more than trebled, and this increase was almost certainly exceeded in the Courts of the Windwards and Leewards, where clandestine trade was much more common. The majority of prosecutions were made by Customs officers "on behalf of the King", but they were not made easily. Gilbert Francklyn, writing in 1790, for example, described how the unfortunate

6 See above, IV, 125-6, n. 29.

7 From a yearly average of 2.4 cases before 1783, to 7.9 per year from 1784 to 1792. The peak year was 1786, with 24 cases. The average for 1793 to 1802, was 8.4 per year. There were Jamaican prosecutions for the smuggling of coffee, tobacco, tea, porter, brandy, rum and gin. See J.V.A. 1005, Friendship, Sheddon; 1018, Eagle, Frears; 1265, Atalanta, Forbes; 1001, Industry, Stewart; 1011, Lady Charlotte, Moore; 1003, Aurora, Sage; 1032, Queen Charlotte.
Comptroller of Kingston, while trying to seize some obviously smuggled French goods, had been "attacked by people armed with Swords, Saws and different Carpenters Tools, and menaced to be cut down, if he dared to set his foot in the yard of the place into which the goods were removed, and from whence they were conveyed by a multitude of Assistants". He had brought suit for assault in the common law courts, but the jury had found the assailants not guilty, and the Chief Justice had even questioned the Comptroller's authority to seize the goods in the first place. During the trial, wrote Francklyn,

The Court House was filled with a great number of Merchants, Shopkeepers and Traders of different denominations, who expressed their satisfaction at the acquittal of the persons indicted (who were two Jew Merchants residing sometimes at St. Domingo, and others at Jamaica, and notorious Smugglers) by very indecent Shouts and huzzas. The Jews immediately indicted the Comptroller for a Trespass, and brought Actions to recover damages, which were laid enormously high. It would not have been wonderful had they succeeded, but the Comptroller was acquitted. 8

Navigation and Revenue Act cases could be prosecuted in either a colonial Vice Admiralty Court or in any Court of Record, but the foregoing example explains why Customs officers almost invariably preferred to prosecute seizures in the jury-less Vice Admiralty Courts. Yet even Judges were susceptible to outside pressures. Gilbert Francklyn's brother Peter, while Comptroller at Tobago, had seized a vessel "for the most flagrant violation of many of the Laws of Trade", only to have the vessel acquitted by the Deputy Judge, on the non-judicial grounds that he "thought

no fraud was intended", with costs awarded to the claimant. Peter Francklyn appealed successfully, but the claimant's stipulation bond proved to be irrecoverable, and the luckless Comptroller had still not been reimbursed ten years later. Another Customs officer, Daniel Flowerdew, the Collector at Kingston, was said to have been "entirely ruined" from a similar misadventure.9

Collectors and Comptrollers were men of substance who enjoyed considerable incomes from their fees and were bonded to observe the regulations honestly; but in the nature of things, most seizures were likely to be made by lowly Waiters and Searchers, who were less able to underwrite the costs of prosecutions or take the risks of reversals or appeals. A typical case might be worth £150, and yet cost £60 to prosecute. From the remaining £90, the prosecutor was entitled to a third, but out of this he would probably have to pay an informer £10 and also foot the bills for "horse hire, Boat hire, and a variety of other Charges", and besides was bound "to advance the money for Counsels fees and many other Expences". It was not then surprising that many junior Customs officers succumbed to the ever-present temptations of bribery.10

Conditions at some Caribbean ports became notorious. At one time in Jamaica, it was said, smugglers did not even have the bother of evading the Customs officers by landing on an unfrequented part of the coast, but were regularly taxed by the Customs officers on entering the

9 Ibid., 15. For the counter-version of the local merchants, see below, 189.

10 Ibid., 9.
port of their choice. The regular sum was £70, of which the Collector received £22, the Comptroller £11, Tide Surveyor £11, Waiters and Searchers £22 between them, and Clerk £4. On many other occasions, Customs officers would offer to "compound" for a fraction of the value of a suspicious cargo, a type of extortion that was so commonly employed that it almost reached the level of respectability.11

Officers of the Royal Navy were less corruptible—or suffered fewer temptations—than the Customs officers, and ran less risk of personal assault; but they suffered just as much from obstruction and expense. Stationed ships during peacetime were never numerous and, despite their Instructions, few naval captains did more than make threatening gestures towards clandestine traders. Notable exceptions were the Collingwood brothers, Wilfrid and Cuthbert, and Horatio Nelson, "the little Captain of the Boreas", who made themselves very unpopular in most of the Windward and Leeward Islands between 1784 and 1787—and even antagonised their Admiral, the easy-going Sir Richard Hughes—with their excessive punctilio in prosecuting cases of false registry and illicit trade, and in castigating the slackness of Customs officers, Crown Lawyers, Vice Admiralty Judges and

11Ibid., 11. Alexander Lindo in 1789 testified that he had paid the Customs officers in Jamaica £1,100 not to prosecute the St. Joseph y las Animas. See below, 191.
colonial Governors.\textsuperscript{12}

All three captains took their duties extremely seriously and professed to be shocked by the practices they found to be prevailing in the Lesser Antilles. Wilfrid Collingwood wrote in January, 1785 that "being plac'd by the Commander in Chief upon this Station Viz. Monseret, Nevis, St. Christophers, Anguilla, and the Virgin Islands", he saw it as his duty "to protect the Commerce of Great Britain, and consequently I take for granted, to hinder Illegal trade, or proceedings from being carried into effect...for which purpose we are plac'd in this Country in times of peace--and sufficiently authorized by the Statutes which are sent us by the Admiralty Board."\textsuperscript{13} He therefore sent in for adjudication four vessels charged with having false registers through the connivance of Henry Bennet, the Collector at Sandy Point, St. Kitt's: "I am very Sorry it is in my power to say", endorsed Horatio Nelson, the senior naval officer then in

\textsuperscript{12}These cases have not received disproportionate notice because of the later eminence of the complainants. They made a notable impact upon London at the time not only because Nelson and the Collingwoods were the most zealous naval officers, but because they were practically the only officers of the Royal Navy who followed their Trade Instructions to the letter. See, for example, Thomas Irving's "Report", 8-14. Admiral Hughes can perhaps be forgiven for being wary of a 27 year-old subordinate who could write: "Whilst I have the honour to command an English Man-of-War, I never shall allow myself to be subservient to the will of any Governor; nor co-operate with him in doing illegal acts. Presidents of Council I feel superior to. They shall make proper application to me, for whatever they may want to come by water"; Nelson to Hughes, January 11, 1785, in Sir Nicholas H. Nicholas, The Dispatches and Letters of Vice-Admiral Lord Viscount Nelson, 7 Vols., London, Colburn, 1845, 114-6. At a later date, Nelson referred to Hughes as being "too much of a fiddler for me", that is, too eager to quibble in order to placate the locals and let sleeping dogs lie; Nelson to Lord Sydney, November 17, 1785, Nicholas, 151.

\textsuperscript{13}Enclosed in Nelson to Philip Stephens, Boreas, Basseterre Road, St. Kitt's January 18, 1785, Adm. 1/2223.
the Leewards, "that at all the Islands in this Station the Illegal Act of granted Registers to Americans--Subjects of the United States is carrying on with great Confidence."\(^{14}\)

Henry Bennet had replied in a strongly worded but weakly argued letter in which he challenged Collingwood’s authority yet answered his charges, claimed that he only acted on the advice of the Crown Lawyers and yet was ignorant of the Acts of Parliament which Collingwood had mentioned. The answer of the Captain of the Rattler was a public letter headed "On His Majesty’s Service", citing the specific Acts of Parliament which provided Royal Navy captains with authority to make seizures in peacetime\(^{15}\) and which governed the registration of British vessels, and asserting conclusively:

> Those Acts are for the Benefit of raising British Seamen for the Defence of both Britain & its Plantations, & to encourage Ship Building both in Great Britain & its Plantations, not to encourage either Foreign Ship Building or Navigation.

\(^{14}\)Cf. Nelson to Captain William Locker, January 15, 1785: "The residents of these Islands are Americans by connexion and by Interest, and are inimical to Great Britain. They are as great rebels as ever were in America, had they the power to show it"; Nicholas, 114.

\(^{15}\)On another occasion, Cuthbert Collingwood cited his Orders of November 12, 1784 to be vigilant against Navigation Act infringements, a letter from the Admiralty of July 27, 1785 enclosing the Royal Proclamation concerning the trade permitted with the Americans, and the Act of 12 Charles II, c.18, which permitted seizures by the Royal Navy; Cuthbert Collingwood to Lord Newcastle, February 17, 1788, Adm. 1/1617.
All four vessels prosecuted on behalf of Wilfrid Collingwood, as well as several others sent in by Nelson himself, were duly condemned. The law concerning registry had been successfully enforced in the Leewards, even though on at least one occasion Nelson had to spend several weeks aboard the Boreas at anchor for fear of arrest on the orders of the common law courts by a Writ of Prohibition.\(^\text{16}\) In February, 1786, Nelson was ordered down to Barbados, but if Admiral Hughes hoped thereby to obtain a respite from the consequences of Nelson's untiring zeal, he was disappointed. Nelson merely transferred his campaign against illegal registry to Barbadian waters, and within two months had stirred up the opposition of local interests, which found a useful ally in the Judge of the Vice Admiralty Court, the embattled Nathaniel Weekes.\(^\text{17}\) In earlier cases, Weekes had refused to accept prosecutions from officers of the Royal Navy in their own names, insisting that they must be made either by officers of the Revenue or by the Attorney General. But in April, 1786, when Horatio Nelson sent in two vessels with false registers, non-British cargoes and foreign crews, Weekes refused to accept an Information from the Attorney General on behalf of the King. This time, Weekes demanded that Nelson include his own name in the Information in order to be liable for costs. Apprehensive of an unfavourable decision, Nelson refused, threatening to carry the vessels for adjudication to the Leewards, where in seven cases in the previous few months Informations in the name of the Attorney General had been "brought before Judge Faher and Esdale at St. Christophers and

\(^{16}\) Nicholas, 171-85.

\(^{17}\) See above, 111,100; V, 177-8.
before Judge Ward at Nevis and were thought proper by those Gentlemen". Aroused by a fear that he might lose the profits of the prosecution, the Attorney General of Barbados tried to persuade Nelson to change his mind, to no avail. The vessels were carried to Nevis for adjudication, despite a mild remonstrance from Admiral Hughes, and condemned on June 20, 1786.18

By the end of 1786, the actions of Nelson and the Collingwoods in asserting the illegality of local practices in the registration of American vessels had been vindicated by the passage of a much stricter Registration Act.19 But by that time, Nelson and his embryonic "Band of Brothers" had turned towards the eradication of another profitable American subterfuge, that of engaging in illicit trade with the British islands under the protection of privileges granted to the Spanish. In August, 1786, Horatio Nelson informed Philip Stephens that Grenville's original Order of 1763 allowing the import of Spanish bullion into British colonies in return for British manufactures, which had been extended later

18 Nicholas, 171. The two vessels were the Louisa alias Brilliant, and the Jane & Elizabeth. The details of the case are in Nelson to Stephens, Boreas, Carlisle Bay, Barbados, May 21, 1786, Adm. 1/2223. The seven vessels already condemned in the Leewards were listed as the schooners Amity alias Eclipse, and Nancy Pleasant, the brigs Gloucester alias Fair View, George & Jane, Hercules and Active, and the sloop Sally.

19 Act of 26 George III, c.60, ordaining that new registers must be taken out by the end of 1787. Nelson's letter of January 18, 1785 had been inscribed by Philip Stephens on March 16, 1785, "Senc Copies to Mr. Rose and desire him to bring the same before the Lords of the Treasury for their information". Copies of the reply of Rose to Stephens dated August 24, 1785, which said that Royal Navy officers were fully empowered by the Navigation Acts to seize and prosecute vessels, were sent out to the officers on station. See Wilfrid Collingwood to A.W. Byam, September 14, 1786, in Nelson to Stephens, October 4, 1786, Adm. 1/2223.
to include the import of mules and other stock, was being used as a cover for the extensive smuggling of American provisions in American vessels with temporary Spanish papers. "As the American Vessells are now pretty tired of adventuring too much amongst our Islands", wrote Nelson with some pride,

Their Vessells after delivering their Cargoes in the French Islands, or at the Dutch Settlements of Surinam, Demerara & Co. upon the Main, repair to the Island of Trinidad, where they obtain from the Government a Qualification to make their Vessells Spanish for a given time. They in general take a Spanish Creole or two, to give a Colour to the fraud, and thus prepar'd, They under Spanish Colours Visit our Islands, and the Custom Houses under the Cloak of the order of Treasury of 1763, and the sanction which they pretend to have from the Board of Customs, admit these Americans; and I have but little doubt, altho' their Decks are Loaded with Cattle, That in their Holds they bring American produce, Thus after all the trouble which some of the Men of War upon this Station have had to hinder American Vessells from Trading to our Islands, Unless Vigorous Measures are made Use of, they will again fill our Ports, as much as heretofore.

Nelson went on to explain that he had detained one of the "American Spaniards" and might have had difficulty condemning her in the Vice Admiralty Court of Antigua had he not found "the American Papers, and Orders of the Owners for this transmogrification." He was determined to stop all Spanish vessels except the smallest open boats, and to seize all Trinidad vessels that appeared to be American-built or manned by Americans, despite the local opposition this was bound to engender.

He continued:
I know the difficulties we shall meet with in having these Vessells prosecuted to Condemnation, the Merchants and Landed people will be against us for Interest sake, the Custom House officers must be, as they admit them, and if they are Condemned, it will show their bad conduct in too glaring Colours.

Although the earliest false Spanish papers he had seen were as recent as May, 1786, Nelson believed that if nothing were done soon, "every American Vessel who Trades to the West Indies will call at Trinidad to receive Spanish qualifications." This illicit trade would enrich the Spanish King, continue to drain the British West Indies of bullion, and help the American merchant marine and shipbuilding industry in its efforts to rival the British.20

Nelson's reports concerning the Spanish trade almost certainly bore fruit in the Navigation Act of 1787 forbidding trade in provisions and lumber with foreign colonies,21 but it was pretty clear that closing every loophole was almost impossible while the Americans were so ingenious, the British colonists so eager to engage in illicit trade, and the local

20 Nelson to Stephens, Boreas, English Harbour, Antigua, August 27, 1786, Adm. 1/2223.

21 Act of 27 George III, c.7. Governor Shirley and the British Consul-General at Philadelphia did report a considerable decrease in the clandestine American trade with the Leewards and a proportionate increase in the British carrying trade with America; H.T. Manning, 266.
officials so easily led astray. Even when Vice Admiralty Courts were completely independent and the patrolling vessels of the Royal Navy were as active as H.M.S. Boreas and H.M.S. Rattler, the resolution of naval officers was qualified by the expenses of prosecution. Career officers from poor families such as Nelson himself, had only their pay to set against costs that might conceivably exceed the value of property condemned. In all cases, claimed Nelson, naval officers, unlike the officers of the Customs, did not prosecute infringers for their own emolument but out of a sense of duty, and yet Customs officers had the King's Chest to resort to for expenses which had to come out of a naval officer's own pocket. 22

After two years on the West India station, even an officer as keen as Horatio Nelson was forced to admit that he handed over all seizures to the Law Officers of the Crown, to prosecute or release as they saw fit. 23

This was all very well in the Leewards, where the Crown Lawyers Stanley, Burke and Adye did all they could to assist officers of the Royal Navy; but in other islands, Law Officers were not only reluctant to prosecute local merchants, but were extortionate and refused to prosecute cases without payment in advance. In Barbados and Grenada, the Attorneys General even demanded a fee for advice on whether to prosecute or not. "Thus an effectual method is fallen upon in those two islands", wrote Nelson just before the end of his tour of duty in the West Indies, "to

22 Nelson to Stephens, Antigua, December 1, 1786, Adm. 1/2223.

23 Ibid.
hinder us from carrying the Acts of Parliament into Execution."  

Horatio Nelson sailed from Nevis for Spithead in the Boreas in May, 1787, but the trouble he had stirred up followed him to England and plagued him almost until the outbreak of the French War. The owners of the Jane & Elizabeth, one of the vessels forcibly carried from Barbados to Nevis, complained to the United States Government, and John Adams, the American Ambassador in London, conveyed the complaint to the Foreign Secretary, Lord Carmarthen, in January, 1788. Carmarthen asked the Admiralty for a report, and since a copy of the Minutes of the Barbados Vice Admiralty Court had already been sent by Judge Weekes, along with recriminations against Captain Nelson, and the Admiralty also had the versions of the incident provided by Nelson and Admiral Hughes, the Law Officers were quite quickly able to draw up a brief of the case and make a report. As a result, a regretful but firm reply was given to Ambassador Adams, and Judge Weekes was firmly reprimanded. Although Captain Nelson's action was "certainly not regular", wrote Philip Stephens in July, 1788, yet under the circumstances in which he stood, the Lords Commissioner did not consider it reprehensible. The Judge of the Vice Admiralty Court at Barbados should not have refused to proceed in the case in the first place, since Captain Nelson had acted correctly, and the later condemnation of the Jane & Elizabeth at Nevis had shown that his suspicions were well warranted. "Their Lordships command me to add", concluded Stephens, "that they do not doubt that the

24 Referring to the cases of the Fanny (Grenada) and Dolphin (Barbados), both seized by H.M.S. Rattler; Nelson to Stephens, October 4, and December 1, 1786, ibid. Also, Cuthbert Collingwood to Stephens, October 13, 1786, and February 17, 1788, Adm. 1/1616-7.
authority of such respectable Opinions, will have due weight in the regulation of your Proceedings in cases of a similar Nature for the future."\textsuperscript{25}

The later actions of Nathanial Weekes indicated little reform in his Court, and the experiences of Horatio Nelson and the Collingwoods explain why few Royal Navy officers found it profitable to pursue Navigation Act infringers in the West Indies after 1787. Vice Admiralty Courts were mostly more co-operative than those at Barbados and Grenada, but enforcement of the Navigation Acts depended all the more after 1787 on the inconsistent efforts of the Customs officers. Year by year their powers were increased, and new recruits were sent out hopefully to the West Indies; yet local opposition against them also mounted annually, especially in defence of the trade with the Spanish colonies. The climax was reached in the Report to the Jamaican Assembly of December, 1789, which represented a two-pronged attack on Customs officers and the Vice Admiralty Court.

After three years of complaints of what were termed the "violent

\textsuperscript{25} Carmarthen to Lords Commissioner, January 25, 1788, enclosing John Adams to Carmarthen, January 21, 1788, and accompanied by a 12-page copy of the Minutes of the Barbados Vice Admiralty Court, Adm. 1/4152; Lords Commissioner to Judge Weekes, July 16, 1788, Adm. 2/1062, 428; John Gale to Philip Stephens, December 17, 1788, Adm. 1/3867. Even this was not the end of the Jane & Elizabeth case. The American owners appealed, and the Decree of the Nevis Court was not finally upheld until April, 1793; Nicholas, 286-8.
and oppressive Conduct of the Revenue Officers" and of the unfriendly deci-
sions of the Vice Admiralty Courts, the Jamaican Assembly had appointed a
Committee under Mr. Redmond early in 1789 "to consider the Effects of the
Act or Acts of Parliament of Great Britain which Vest a Concurrent
Jurisdiction in Revenue Causes, and in Cases of Seizure under the Laws of
Trade, in the Courts of Vice Admiralty in His Majesty's Colonies." After
taking the evidence of five Proctors registered to practise in the Vice
Admiralty Court and two merchants who had been involved in recent litigation,
most of whom were also Members of the Assembly, the Committee made its
outspoken report on December 18, 1789. This asserted—with questionable
historical accuracy—that the colonial Vice Admiralty Courts had been given
excessive powers at the time when the Thirteen Colonies had been "preparing
to resist the authority of the British Legislature"; and argued that these
powers, intended for rebellious subjects, should not apply with such force
to loyal Jamaica.

One of the chief grievances was that the Navigation and Revenue
Acts could be enforced in the colonies in Vice Admiralty Courts as well as

26 For example, Minutes of Meeting of Meeting of Merchants, May 22,
1786, in Campbell to Sydney, May 29, 1786 and Campbell to Sydney, October
4, 1786, February 18, June 6, 1787, C.O. 137/86-7. The Navigation Act of
28 George III, c.6 was received in Jamaica in May, 1788; Campbell to Sydney,
May 30, 1788, ibid. The Jamaican Assembly was particularly active between
1786 and 1789 defending its commercial interests. In 1787, for example, it
issued a Report on trade between the British West Indies and British North
America, and also recommended a reformed Packet service; C.O. 137/87.

27 Original in Journal of House of Assembly; printed copies in
Jamaican Archives and C.O. 137/88.
common law courts. Since Customs officers invariably libelled seizures in the Vice Admiralty Court, the Committee asked for pressure to be brought to bear to bring about a repeal of the portions of the Act of 4 George III, c.15\textsuperscript{28} which allowed the concurrent jurisdiction. Moreover, the Report explained, the Vice Admiralty Courts had been empowered by British Acts upon certain lines and been given no power to regulate their own procedure, yet the Jamaican Court had regulated its procedure "in a Course analogous to the Practice of that Court as a Prize Court". This deprived the West Indians of the benefits of jury trial and verbal cross-examination enjoyed by other Britishers, and threw proceedings open to the dangers of perjury and its subornation.

The severest strictures of the 1789 Committee, however, were levelled at the situation which allowed the Customs officers such latitude and licence. It was alleged that, unchecked by the Courts, the Customs officers were in the habit of seizing vessels and cargoes on the flimsiest prettexts, even vessels they had previously entered or cleared themselves, forcing the crew ashore, placing soldiers or naval seamen in charge, refusing to allow even the owners to come aboard, and then taking weeks and sometimes months before filing an Information. In the meantime, they might make it known that they were open to offers to compound for the value of vessel and cargo, or a part of them. This situation was worsened by the fact that the Customs officers, unlike the claimants whom they brought into court, were not bound to give security against costs in the case of acquittals\textsuperscript{29} and

\textsuperscript{28} Particularly, Section 41.

\textsuperscript{29} Actually, this security, which formerly had been as high as 3-400, had been reduced to an uniform 60 by the Act of 4 George II, c.15.
were given extremely generous latitude by Judges in questions of Probable Cause. It was also said that few Customs officers had even provided the security on entering office required by the Acts of Trade.

In evidence presented in the 1789 Report, James Martin, a Proctor, quoted the case of Les Deux Amis,\(^{30}\) in which Daniel Flowerdew had had the cargo landed and sold before filing an Information and without returning an account of sales. When the case went to trial, the vessel and cargo were acquitted. It was then found that not only had Flowerdew been permitted by the Register to file security on taking office on his own bond of £4,000, but that he had appropriated the money from sales and was about to leave Jamaica. Despite the most strenuous efforts by the owners of Les Deux Amis and their Proctors, Flowerdew managed to escape the island.

Following James Martin, Alexander Lindo, merchant and prominent prize agent, mentioned "several Instances of Vessels admitted to clear out & which upon their return with valuable Cargoes have been seized & also of Vessels admitted to enter & seized after being cleared out". Archibald Thompson, merchant and Member of the Assembly, testified that a cargo consigned to him had been seized by an officer "without any Cause & when he was asked for what reason he did so seize her, he answered for his Pleasure", and also gave the Committee a detailed account of the case of the Glasgow ship Lady Charlotte,\(^{31}\) which spoke for itself.

Arriving at Kingston on April 1, 1786 with rice and lumber from

\(^{30}\)J.V.A. 978.

\(^{31}\)J.V.A. 1011. The Customs officer involved was John Rousselet, Waiter/Searcher at Kingston, a particular bête noire of Jamaican merchants.
Georgia, the Lady Charlotte was permitted to unload on April 3, having paid the usual tonnage, transient and powder taxes. On April 13, while the Master was assessing the market and deciding whether to sell in Kingston or go on to the outports, a Waiter/Searcher went aboard with a number of soldiers. Two days later, he nailed down the hatches, and on April 17 officially seized the vessel, put a naval petty officer aboard and forced the Master and crew to go ashore, on the pretext that they were unloading the cargo. The seizing officer claimed that he had impounded the cargo on general suspicion and would deliver it all back if proved wrong. Nevertheless, he ordered the cargo unloaded without allowing the owner or any crew member to be present. For a long time he would neither file an Information nor state specific grounds for seizure, putting around the erroneous rumour that they included the presence of illicitly imported East India goods. At the same time, he offered the owner to compound for a third of the value of vessel and cargo, the offer being turned down.

At last, on May 25, an Information was filed, citing the presence of two barrels of rum containing 15 gallons apiece and a puncheon containing 108 gallons "being the produce of the Colonies of North America not in British possession", and of 6 1/2 tierces of rice and 5,000 board feet of planking "concealed". In their defence, the Claimants successfully pointed out that the rum was ship's stores taken aboard in Jamaica on a previous voyage, and that the goods "concealed" had been ignored by the Customs officers themselves when making out their entry forms, obviously through indifference, neither rice nor planking being at that time illegal importations or liable to duty.

The case of the Lady Charlotte was not concluded until August, 1786,
the vessel having remained four months in the hands of the seizing officer. When the owner came to take her over after the handing down of the Decree of Acquittal, there was 2 1/2 foot of water in the hold and the spoiled cargo had depreciated in value from £2,500 to £1,500. In addition, rice and planking worth £230 were missing, and because of the delay in judgement, the Lady Charlotte lost the chance of a freight worth £500. When she did set sail, dangerously late in the year, she was caught in a hurricane, beached and suffered damage costing another £150. To add to this chapter of expensive accidents, the expenses of Master, Mate and crew during the enforced stay in Kinston amounted to £300; and besides there were the matters of a Register's bill for £150 and Proctors' costs totalling £500.

So great were the expenses, direct and indirect, of Vice Admiralty Court cases, testified Alexander Lindo, that he would "rather give half the value of a Vessel & Cargo libelled in the Court of Admiralty than go to the Expence of clearing her". Daniel Moore, another witness, mentioned a single hogshead of tobacco libelled by the Comptroller of Customs at Kingston, for which the Register's bill was £129.11.3 and the Proctors' charges, £178.2.6. Archibald Thompson stated that the costs in the case of the El Beaumont[^32] amounted to £750, and said that the least expensive case he had heard of cost £150. Alexander Lindo, most outraged of the critics of the Vice Admiralty Court, topped all with the assertion that in the

[^32]: Also called Le Beaumont, J.V.A. 1015 (1786). This was the litigious case involving Daniel Flowerdev. The Spanish Ambassador, del Campo, complained and there was an extensive official correspondence over the case. See Sydney to Campbell, June 6, 1787 and Campbell to Sydney, August 12, 1787 (with nine enclosures), C.O. 137/86.
case of the Malumbruno "expences attending the Claim and Acquittal amounted to £2,004.15.0."33

The Jamaican Report of 1798 concluded that the costs of Admiralty litigation ranged from twice to six times that of comparable proceedings in the Jamaican Grand Court. This alone was a strong enough argument for taking the concurrent jurisdiction away from the Vice Admiralty Courts. Failing that, however, drastic reforms were called for in the regulation of Vice Admiralty Court fees, as well as in the control of the officers of His Majesty's Customs.

It is instructive to examine the fate of the 1789 Report. Drafted as a Memorial, it was sent to London on December 22, 1789. Stephen Fuller, the Jamaican Agent in England, was instructed to press the petition home, and in his usual industrious way he bombarded William Pitt with requests for an interview to discuss it. After failing to receive replies to letters dated February 2, May 1 and May 15, 1790, Fuller directed a powerful five-page broadside to Lord Grenville on August 1, backing it up with a letter to Evan Nepean, begging for a reply to send to Jamaica by the next Packet. At long last, on August 18, a reply was sent, though it must have been disappointing to the framers of the Memorial. Grenville firmly, if somewhat disingenuously, disowned the power to make the changes advocated by the Jamaican Assembly. Only the British Parliament, he pointed out, had the authority to repeal or amend one of its own enactments.34

33 No papers for the Malumbruno appear in the Jamaican Vice Admiralty records.

34 Fuller to Grenville and Fuller to Nepean, August 1, 1790; Grenville to Fuller, August 18, 1790, C.O. 137/88.
Before any further action was possible, the revolution in Hispaniola gave the Jamaicans as well as the British Government something more important to worry about. The Act of 4 George III, c.15 remained in force throughout the French Wars, and the scale of colonial Vice Admiralty fees was not established, or changed, before 1815.35

By and large, the metropolitan authorities had a disposition to ignore colonial complaints that had no direct bearing on metropolitan interests; or, at least, they preferred to support the versions of events given by Governors, Judges and Customs officers, to those provided by colonial legislators. Vice Admiralty Courts and the Customs service in the colonies might be faulty in operation--and known to be so--but they were the only imperial machinery available. Certainly, the Vice Admiralty Courts were preferable as agents of the British Mercantile System to the common law courts, so notorious for toeing the colonial line.

The defence of the trade carried on between British and Spanish colonies was an even more consistent theme in the Caribbean colonies than the attack upon the Vice Admiralty Courts; and since it could be argued that the trade was to the advantage of the metropolis, it had a far better chance of an audience in London. Proponents claimed that some form of trade with Spanish colonies was practically coeval with the foundation of Jamaica as a British colony in 1655.36 The cession of the Neutral Islands

35 See below, IX,

in 1763, had been followed by the creation of free ports to allow trade with the Spanish, in Dominica, Grenada and Jamaica, in 1766. By the end of the Maritime War, the Spanish trade was so well established that the Order-in-Council of July 2, 1783 had been attacked in some colonies chiefly for being repugnant to the Free Port Act of 1766.37

Horatio Nelson, significantly, had less success in the Lesser Antilles in attacking the Spanish than the American trade, and the controversy over this branch of Creole trade was largely what led him into conflict with Governors Shirley of the Leewards and Parry of Barbados.38

The correspondence of Jamaican Governors favourable to local points of view, was also peppered with petitions defending the trade with Cuba, Central America and the Spanish Main. A Memorial of certain Kingston merchants in May, 1786, for example, shrewdly described this commerce as "most lucrative to this Island, and beneficial to the Mother Country". Several vessels recently seized by unsympathetic Customs officers;

had been guilty of no breach of the Free Port Act, but what had been uniformly connived at and allowed for a long series of years past, and that such Commerce was founded on motives of sound Policy, and had in no one instance operated to the prejudice of His Majesty's Revenue, or the Manufactures of Great Britain.39

37 For example, Lieutenant Governor Campbell of Jamaica to Lord North, November 26, 1783, P.R.O. 30/8, 352, i.

38 Nicholas, 171-85.

39 Minutes of Meeting of Merchants, May 22, 1786 and Resolution of May 25, 1786, in Campbell to Sydney, May 29, 1786, C.O. 137/86.
Such astute pleading received its reward in the extension of the Free Port system to several Jamaican outports, Bermuda and the Bahamas by the Act of 1787, which was made perpetual in 1792. The outbreak of war in 1793, and even the declaration of war by Madrid in 1796, did not arrest the trade with the Spanish colonies. On the contrary, the dispensation given to colonial Governors by the Navigation Act of 1788 to open their ports when circumstances dictated, was greatly extended by the system of trade by licence established by innumerable Orders-in-Council after 1797. Besides this, further free ports were created in Antigua and the Caicos in 1793, in Tortola and St. Vincent in 1802 and 1805, and in the captured islands of Tobago, Trinidad, Curacao, St. Croix and St. Thomas between 1796 and 1805. Finally, in 1806, all British Caribbean ports were thrown open to neutral vessels, under certain restraints, as long as the war lasted and for three months after the signing of peace.

40 Acts of 27 George II, c.27 and 32 George III, c.37.

41 Act of 46 George III, c.111. Earlier wartime relaxations had been made by the Acts of 34 George III, c.68, 34 George III, c.50, 35 George III, c.31, 38 George III, c.33 and 39-40 George III, c.51; Ragatz, Planter Class, IV, 204-38; Armentage, 82 seqq.; Manning, 266-86. For further wartime relaxations, see, for example, William Fawcener to George Rose, March 20, 1794, B.T. 3/4, 327 (manning); ditto, October 31, 1796, B.T. 3/5, 220 (bonds); Fawcener to Edward Cooke, November 21, 1805, B.T. 3/8, 171 (American trade); Cooke to William Marsden, January 1, 1805, Adm. 1/4198 (prize goods). For the licence trade, see, for example, John Sullivan to Evan Nepean, September 24, 1803, Adm. 1/4192: "Whereas it is expedient that the Trade carried on by Spanish Vessels between our Free Ports in the West Indies and Spanish Ports should not be interrupted during the existing Hostilities or any other Hostilities that may take place. . . ." Also, Sullivan to Marsden, March 6, 1804, Adm. 1/4195.
The British system of trade in the Caribbean during the last nine years of the Napoleonic War, however, was only free trade in the limited sense that, under the protection of British naval supremacy, British merchants could trade wherever they could find a profit and foreigners, through the opening of British ports, could trade wherever their commerce acted to the British advantage. Under this system, British Vice Admiralty Courts did continue to impose the remaining Acts of Trade, though the volume of Instance jurisdiction was hidden by the flood of prize business with which the Courts were inundated. New Instance Courts were also established as a matter of course in all the newly-acquired colonies, though with only indifferent success.42

To a certain extent, Vice Admiralty Courts in the Caribbean throughout the period from 1763 to 1815, failed to provide the service indispensable to the completely effective operation of British Mercantilism because they were too often weak, inefficient or corrupt, and lacked the necessary power of enforcement in the face of active local opposition. But these failings were explained, to a considerable extent, by shortcomings in the Mercantile System itself, and by its gradual disappearance. A system which was largely aimed at attacking the valuable American trade for the benefit of essentially metropolitan interests, could not expect to receive wholehearted support

42 See below, IX, 247-8, 252-4. Non-prize cases at Jamaica between 1793 and 1802 averaged about eight a year, and between 1802 and 1815 about 18.7 a year. A large proportion of these, however, were either Ordinary Instance cases, or cases of infringements of the Slave Regulations. See above, 230, n.7.
in the Caribbean. The operations of the Courts, moreover, were confused by the flexibility of a "system" which attempted to combine a rigid exclusion of American commerce and some form of protection for the sugar industry, with a great latitude in the trade with the Spanish colonies.

For a long time, the Spanish trade was regarded as invaluable by West Indians and metropolitan merchants alike. But as it continued to expand, in growing rivalry with the Americans, it began to be seen not as a complement but as a challenge to purely West Indian interests. As such, it amounted to a wholesale erosion of the Old Colonial System, with its over-riding emphasis on the protection of the West India Sugar Interest. The fretting away was well under way by 1790, but the racial revolt that erupted in Haiti, and the French war that was renewed three years later, not only provided distractions, but speeded the process that destroyed the West Indian plantocracy and, at the same time, made the Vice Admiralty Courts redundant as enforcers of an imperial system of trade.

43 For example, the operative Acts and Orders had become so numerous and the System so complex by 1790, that the Board of Trade recommended the drawing up of a comprehensive Navigation Act Code, consisting of a list of the Acts and Orders in operation and of the goods that could be imported and exported from metropolitan and colonial ports, and a summary of the relevant Opinions of the Law Officers of the Crown; Stephen Cotterell to John Gale, March 26, 1790, B.T. 3/2, 255.
Chapter Eight: Caribbean Courts and the Last French Wars: Phase One, The French Revolutionary War

The conjunction of the complex civil war in Hispaniola with the French Revolution after 1789, ensured that British forces in the West Indies were even better prepared for war with the French in 1793 than they had been in 1778. Indeed, the first major British military operation of the French Revolutionary War was the invasion of Hispaniola, and throughout the wars with Revolutionary and Napoleonic France, the Royal Navy enjoyed the supremacy of the Caribbean, though this was not absolute until after 1805.¹ British naval power in the first phase of the Wars, besides providing cover for the costly adventure in Hispaniola, practically eradicated, with the help of privateers, all commerce carried on in enemy vessels. After 1793, the trade of Britain's enemies was carried by neutrals to a greater degree than ever before, particularly by the Americans, who found in the Wars an excellent opportunity to renew the expansion of their commerce to the South.

With the outbreak of war in 1793, the Caribbean Vice Admiralty Courts eagerly revived their wartime functions as the adjuncts of British naval power, promptly condemning nearly all the prizes brought before them.

¹That is, after the Battle of Trafalgar, October 21, 1805. See William James and W.L. Clowes, Naval History of Great Britain, London, Macmillan, 1902, I-III. There is no modern detailed account of the British campaign in Hispaniola. The best are probably still those given by Bryan Edwards in the supplement to his History Civil and Commercial of the British Colonies in the West Indies, London, 1798; and J.W. Fortescue, History of the British Army, II, 11.
on principles established in the earlier conflicts. Experience gained in the two previous wars also ensured that the Prize Courts achieved a peak of perspicuity in detecting the subterfuges engaged in by belligerent and neutral traders. Yet this very energy and efficiency, when coupled with the completeness of British naval hegemony, proved an embarrassment when the Courts showed that they were unresponsive to sudden changes of imperial policy. In the American and Maritime War, British seizures and condemnations had helped to provoke, successively, declarations of war or belligerent attitudes on the part of practically every other maritime power, and Britain had been disastrously weakened. William Pitt and his advisers were determined not to repeat the mistakes of the North Administration. Besides, the Caribbean policy of the British Government was now as much commercial as military and naval, calling for the preservation of the profitable trade of the Spanish colonies at the same time as the French colonies were either taken over or destroyed. Consequently, the rigour of the Caribbean Vice Admiralty Courts in condemning neutral vessels, particularly American, in penalising the trade with the occupied or friendly parts of Hispaniola and, after the Spanish declaration of war in 1796, concurring with those naval captains and privateers who saw a Spanish war simply as an excuse for unlimited plunder, ran counter to British policy. The one serious diplomatic crisis was averted by Orders-in-Council which changed seizure policy and ordered the release of seized vessels, and by decisions of the Court of Appeals which reversed Vice Admiralty decrees.

2"...witness the proverbial remark, that a Spanish war is the best means of manning our navy"; James Stephens, War in Disguise, 130.
of condemnation. But these were simply pragmatic emollients, and what was really needed was a wide-ranging reform and reorganisation of the Caribbean Vice Admiralty Courts that would make them more directly amenable to metropolitan control, and this had to await the last years of the French Revolutionary War and the first years of the war against Napoleon.

During 1791, the white inhabitants of the British West Indies became extremely concerned over conditions in French Hispaniola, but their repeated pleas for an augmentation of the naval force in the Caribbean were occasioned less by the threat of the French navy than by the almost paranoid fear of the spread of "infection" from the rebellious negroes of Hispaniola to their brethren in the British islands. In fact, the naval flotilla at Jamaica alone throughout 1791 and 1792 consisted of eight warships, a far larger force than was usual in peacetime, and this was considerably augmented during 1793. Despite the pessimism of the Jamaicans, the British forces in the Caribbean were well prepared when hostilities commenced at the beginning of April, 1793. As early as February 14, orders for general reprisals had been sent out to Royal Navy captains, and commissions and instructions sent to the West Indies for privateers and prize

3 For example, Stephen Fuller to Henry Dundas, October 31, 1791, C.O. 137/89.

4 H.M.S.S. Centurion, 50 guns, Blonde, Diane and Brune, 32, Hound and Serpent, 16, and Liberty and Advice cutters. The total of naval seamen in October, 1791, was 1262. There were also 1600 regular soldiers in Jamaica at that time, the largest peacetime total up till that time, compared with a maximum of 2220 at the height of the Maritime War; ibid.
courts. Although these did not reach the islands until the end of March, the Royal Gazette of Jamaica had announced as early as March 9 that "His Majesty's ships at Port Royal are in such a state or preparation they could put to sea at an hour's notice" and were merely awaiting official orders. These arrived on March 30 and the same day the six French merchantmen in Jamaican ports were seized and the fleet under H.M.S. Europa put to sea in search of other prizes.

Within the first few months of the war, a very large number of letters of marque were issued throughout the West Indies, and a wholesale sweep of French prizes occurred with very little opposition. Examination of the pattern of seizures made by Jamaican cruisers, for example, shows that the waters adjacent to the coasts of Hispaniola were systematically combed by Royal Navy ships and privateers alike. Within the first 15 months of the War, 101 French vessels were libelled in Jamaica, the total for the subsequent similar period falling dramatically to 24 as this source of prizes dried

5 Following the Order-in-Council of February 9 and the Royal Proclamation of February 12, 1793. Commissions for Prize Courts were initially sent out to Barbados, the Bahamas, Dominica, St. Vincent, Grenada, the Leewards and Jamaica; Adm. 2/1063, 344-56, 359, 372. Although the Prize Court Commissions are missing, Instructions were also sent out later in 1793 to Courts in Tobago, Bermuda and St. Kitt's; Adm. 2/1064, 74. The prize returns in H.C.A. 49/99 show that there were, besides, Prize Courts in Tortola and Montserrat between 1793 and 1795; a thirteenth Caribbean Prize Court was temporarily established at St. Nicholas Mole between 1794 and 1798, and a fourteenth at captured Martinique between 1795 and 1802; Adm. 5/42.

6 The circular signed by Henry Dundas announcing General Reprisals was published as a supplement to the Jamaican Royal Gazette on March 30, 1793, along with a Proclamation by Lieutenant Governor Adam Williamson announcing the issue of letters of marque, and ordering the detention of French nationals. The six vessels seized were the Le Lambert, Le Cesar, La Legère, La Margueritte and an unnamed schooner, seized by H.M.S. Europa and the entire Jamaica Squadron. They were not condemned until August 13-14, 1793; J.V.A. 1091-6.
PATTERN OF JAMAICAN SEIZURES
1793 A. ROYAL NAVY

KEY

⊙ First Quarter
△ Second Quarter
○ Third Quarter
▲ Fourth Quarter
PATTERN OF JAMAICAN SEIZURES
1793 B. PRIVATEERS

KEY

○ First Quarter
× Second Quarter
○ Third Quarter
△ Fourth Quarter
BUSINESS OF BRITISH VICE ADMIRALTY COURTS IN THE CARIBBEAN, 1793-1795

KEY
Shading, Royal Navy
Plain, Privateers
up. 7

Even more remarkable were the numbers of American vessels seized for trading with the French colonies. Some French ports had been opened to limited American trade since 1787, but as soon as the revolution had occurred in Hispaniola the Americans had eagerly extended their activities to include trade in all provisions and lumber in return for tropical produce, with all the ports opened up by rebellion. When war broke out between Britain and France two years later, the Americans redoubled their efforts, not only supplying all French colonies with provisions, but also proving willing to carry French cargoes in their own neutral vessels. At first, the only seizures had been of American vessels carrying cargoes still under French ownership; but the notorious British Orders-in-Council of June 8 and November 6, 1793, had hit at all American trade with the French by instructing British cruisers to stop and detain all neutrals carrying French produce, even on their own account, and by effectively declaring all provisions contraband of war. 8

7See accompanying maps, and table of seizures at Jamaica, 1793-1802. During the years 1793-5, 312 prizes were libelled at Jamaica, of which 192 were brought in by the Royal Navy and 120 by privateers. As far as can be told the total for all Caribbean Prize Courts during those years was 1039, of which at least 663 were libelled by privateers and 324 by the Royal Navy (52 unknown). Totals by Courts: Jamaica, 312 (R.N. 192, privateers 120); Bahamas, 214 (28, 186); Leewards, 212 (22, 138; 52); Bermuda, 150 (13, 137); Dominica, 109 (38, 71); Barbados, 25 (18, 7); Tortola, 12 (12, 0); Grenada, 6 (1, 5); H.C.A. 49/99 sqq.

8The Order of June 8, 1793 rejected the principle of Free Ships: Free Goods and allowed provisions to be commandeered; that of November 6, 1793 ordered cruisers "to stop and detain all ships laden with goods the produce of any colony belonging to France, or carrying provisions or other supplies for the use of such colony." A.S.P. F.R. I, 240, 449; Samuel F. Bemis, Jay's Treaty: A Study in Commerce and Diplomacy, Yale, 1962 (1923). The Additional Instructions relating to these Orders are in Adm. 2/1063, 521-7.
As a result of the Orders-in-Council of 1793, a large number of American vessels was carried into British West Indian ports, where they were duly condemned by the recently commissioned Prize Courts. The United States Consul at St. Eustatius reported on March 1, 1794 that no less than 250 American vessels had been seized, of which at least 150 had been summarily condemned. The Prize Court in Jamaica alone had adjudicated 135 American vessels in the first 15 months of the War, before news of the moderating Order-in-Council of January 8, 1794 was received in the West Indies. This limited the seizures of neutrals to those found carrying French West Indian produce direct to Europe, those caught running an effective blockade and those carrying French-owned goods or contraband. In line with generally accepted principles of international law, provisions were no longer held to constitute contraband of war. The flood of American seizures dried up more suddenly than that of French vessels, as Americans ceased to carry French produce directly between the French West Indies and continental France. Instead, they continued to carry provisions and lumber from the United States to the French West Indies with impunity, taking in exchange French sugar and coffee that were either for American

9 Fulwar Skipwith to Secretary of State, March 1, 1794; A.S.P. F.R. I, 429; 475. The Department of State claimed in July, 1794 that 307 vessels had been seized; Hammond to Grenville, September 5, 1794, enclosing list of July 31, 1794, F.O. 5/1.

10 This Order practically returned to the Rule of 1756, since the direct trade with Europe was the only one completely denied to the Americans during peacetime; A.S.P. F.R. I, 430-1.

11 In the second 15 months of the War, only seven U.S. vessels were libelled at Jamaica.
consumption or, more commonly, were trans-shipped for France in American ports. Besides this, a certain volume of non-contraband articles were sent from France to the French West Indies by way of the United States.

By modifying their policy to allow considerable licence to the Americans, the British acknowledged their unwillingness to risk war with the United States at that stage. The fate of the American vessels seized earlier, however, remained such a serious grievance that only the statesmanlike qualities of Lord Grenville and John Jay and the pacific inclinations of the American Federalists prevented the Americans from joining in the War on the side of the French. As it was, the British Order-in-Council of August 6, 1794 enabled the owners of the American vessels condemned in the West Indies to prosecute reasonable appeals long after the normal time limit had expired, and the Anglo-American Treaty signed by Jay and Grenville in November, 1794 went a long way towards restoring condemned American property and removing the chief American grievances. 12 By Clause VII of Jay's Treaty, a mixed commission was set up to provide compensation for seizures made contrary to the

12 A.S.P. F.R. I, 482 and Lords Commissioner to Vice Admiralty Court Judges, Adm. 2/1064, 74. Commanders of warships were instructed at the same time to ignore the Order-in-Council of June 8, 1793; F.O. 95, 512. Jay's Treaty did not reach the United States until March 7, 1795, ratifications were not exchanged until October 28, 1795, after an extremely stormy passage through Congress, and the Treaty was not formally proclaimed in the United States until February 28, 1796; Bemis, passim; Burt, United States, VIII, 141-52.
principles established in the clauses defining contraband and blockade. The commission sat until 1798 and awarded large sums in compensation, while at the same time the Court of Appeals reversed most of the earlier decisions of the Caribbean Vice Admiralty Courts.13

The chorus of blame directed at the Vice Admiralty Courts by the Americans—which has been echoed by most later historians—14 was scarcely deserved, since to a certain extent the Courts had been made the scapegoats of official policy. In promptly condemning infringers of Orders-in-Council, Prize Courts were merely following their Instructions and precedents established in earlier wars.15 They could not fairly be blamed for delays in communications that made them unresponsive to sudden shifts in official policy, any more than for the complicated and expensive procedures which, in earlier wars, had restricted appeals to an insignificant trickle.16 Judges, moreover, suffered financially from reversals of decisions on appeal, and their haste in condemning American seizures in 1793 and 1794 had therefore been penalised already.17

Those who suffered most from the sudden change of British policy

13 Clauses XVIII-XXV. In addition, Clauses XI-XVI established free trade during wartime between the United States and the British West Indies, subject to certain restrictions; Bemis, 381-90.

14 For example, Burt, United States, 153.

15 See above, IV,128-137.

16 See above, VI,223-224.

17 See above, II,81-3,n. 103.
during 1794, however, were the libellants of American property seized under the Orders-in-Council of 1793. Royal Navy captors merely suffered the loss of prize profits, the Admiralty bearing the costs of reversed decisions; but many privateers were ruined. Thereafter, there was an understandable decline in privateering activity in the Caribbean for the remainder of the French Revolutionary War. Jamaican privateers, for example, brought in 104 prizes in 1793, compared with the Royal Navy's total of 86, but only 27 in the subsequent three years, during which the Navy libelled 185. Even in 1799, the most productive year of the War, privateers only libelled 23 prizes in Jamaica, against the Royal Navy's grand total of 369. 18

Caution on the part of Caribbean Vice Admiralty Courts and the decline of the British privateer had some bearing on the general decrease in Prize Court business during the second half of 1794 and the whole of 1795; but the chief reasons were the Anglo-American détente and the initial success of the British campaign in Hispaniola. The Caribbean policy of William Pitt had called for the takeover of the richest of the French West Indian colonies. Pitt was also by no means averse to free trade with the Americans to the extent that it acted to Britain's advantage. 19 By the end of 1794, Britain and her Spanish allies had practical control of French Hispaniola. British civil government—including a Vice Admiralty Court—had been established at St. Nicholas Mole, and a completely free trade was carried on

18. See accompanying table of Jamaican cases.

19. As befitted a moderate disciple of Adam Smith. For evidence of the views of the Cabinet towards free trade in the Caribbean, see, for example, the Minutes of the Privy Council for November 3, 1797 in Chatham Papers, P.R.O. 30/8, 349, ii.
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with several captured or friendly ports. Under the protection of the Royal Navy, British traders carried on a more energetic trade with the non-British Caribbean than ever before; and the Americans, from being evaders of the blockade of enemy colonies became invaluable suppliers for an extended empire, under the commercial clauses of Jay's Treaty. In this fortunate situation, Vice Admiralty Courts had little work to do.

After 1795, although British naval forces burgeoned, diplomatic and military events conspired against the British cause and William Pitt's policy of an "empire of free trade" in the Caribbean. For continental reasons, first Holland in October, 1795, and then Spain in November, 1796, joined in the War on the side of the French, at the same time that typhoid, yellow fever and the successes of Toussaint l'Ouverture reversed the tide of British fortune in Hispaniola. In 1797, having suffered the defection of their Spanish allies and 40,000 dead, the British were forced to abandon Hispaniola, and fall back upon a more traditional, maritime form of warfare in the Caribbean. Although limited trade with the Spanish colonies was preserved by the system of licences, and a triangular trade

20 Dundas to Lieutenant Governor Williamson of Jamaica, December 3, 1793, C.O. 127/91. Jeremie, for example, was visited by 92 vessels from British ports between April 1 and June 30, 1794, and exported 2.86 million pounds of coffee, 153,000 pounds of muscovado sugar, 68,000 pounds of cotton and 79,000 pounds of cocoa, to British ports; John Rousselet to Williamson, November 18, 1794, ibid.

21 Seizures of Dutch vessels had been ordered as early as February 9, 1795; Adm. 2/1064, 206. Commissions and Instructions against the Dutch were sent to all Vice Admiralty Courts (including St. Nicholas Mole) on October 9, 1795; Adm. 2/1064, 456-7. Commissions and Instructions against Spain were sent out on November 11, 1796; Adm. 2/1065, 283-92.
treaty was made by General Maitland with Toussaint in 1798, Britain reverted to a policy of general seizure. Few military forces were sent out to the West Indies after 1797, but an increasing number of Royal Navy ships were, until by 1800 they totalled almost a hundred. In Jamaica alone, the number reached 39—with which 24 were ships of the line or frigates—in 1798, and did not fall below 36 until 1802. With such an enormous force not only scouring the seaways but effectively asserting the blockade of many enemy ports, the volume of Prize Court business returned to the level of 1793 in 1798, doubled it in 1799, and remained almost at this peak until the signing of the Treaty of Amiens.

In the last three years of the French Revolutionary War, British cruisers roamed more widely and freely than ever before, competing with each other for the available prizes. Besides the regular stations patrolled from Antigua, Barbados and Jamaica in the Maritime War, Royal Navy ships poulad with impunity the waters off the Spanish Main, the Old

22 The licence trade was approved by the Cabinet on November 3, 1797, Instructions being sent out to Governors on November 20; P.R.O. 30/8, 349. A copy of the Maitland Convention, dated August 31, 1798, is in C.O. 137/100. This bilateral agreement was converted into a tripartite convention in June, 1799 through Dr. Stevens, the U.S. Consul at Cap Haitien; Balcarres to Portland, June 4, 1799, C.O. 137/102.

23 Totals of Royal Navy vessels at Port Royal: 1784-90, 7-8; 1791-4, 12; 1795, 15; 1796-7, 20; 1798, 39; 1799, 40; 1800, 37; 1801, 36; 1802, 38. Figures from Jamaica Almanacks, except for 1796-7, taken from libellants in Vice Admiralty cases, Jamaican Archives.

24 See table of Jamaican seizures, 266.

25 See map, above, VI, 222.
PATTERN OF JAMAICAN SEIZURES
1799
A. NEUTRAL VESSELS

KEY
- American
- St. Thomas "Danes"
- Others
PATTERN OF JAMAICAN SEIZURES
1799 B. BELLIGERENT VESSELS

KEY
- French
- Spanish
- Dutch
Bahama Channel and the Florida Straits, and as far afield as the coast of the Guianas, the Gulf of Campeche and the mouth of the Mississippi. To Jamaica, for example, ships brought in prizes from up to a thousand miles away in any direction. At different times, the major Spanish ports and the ports of Hispaniola were so closely invested that only vessels with British licences were able to trade with them. Prizes were taken within sight of Havana, where a dozen Spanish ships of the line were anchored, and even cut out from closely guarded enemy harbours. Privateers did not stand much chance in the face of such eager competition, and continued to flourish, modestly, only in the Bahamas and Bermuda, the waters around which naval vessels did not care to patrol.

Undoubtedly the best way to assess the integration of the Vice Admiralty Courts with British naval policy is to study the ships' logs and the Admirals' and Captains' letters, in conjunction with the cases of prizes brought into the local Vice Admiralty Courts. Not only does this provide a clear picture of the complex round of patrolling for defence, cruising for prizes and convoying the Trade which were the lot of warships in the Caribbean, but also the degree to which zealous naval officers could expect co-operation from the Vice Admiralty Courts. A typical cruiser, though the most successful of all, was the 28-gun frigate H.M.S. Surprise, stationed at Jamaica and captained successively by Edward

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26 See accompanying map.

27 Ships', logs, Adm. ; Admirals' letters, Adm. ; Captain's letters, Adm. . In fact, the only accessible Vice Admiralty papers are those in Jamaica.
Hamilton and Christopher Laroche.\textsuperscript{28} Originally the French \textit{L'Unité}, captured in the first year of the War, H.M.S. \textit{Surprise} had been used to carry convicts out to New South Wales, before being sent with a convoy to Jamaica in the summer of 1798. Edward Hamilton was a notorious disciplinarian, who pressed his vessel and its crew of 180 to the limit of their endurance.\textsuperscript{29} But his men endured willingly for the fantastic success that Hamilton's persistence produced. In just over two years between September, 1798 and January, 1801, the \textit{Surprise} was engaged in 13 cruises. Between them, Hamilton and Laroche libelled 56 prize vessels in Jamaica, of which all but six were condemned. Adding vessels libelled in other Vice Admiralty Courts such as that at St. Nicholas Mole, it was said that Hamilton alone was responsible for the seizure of some 80 vessels worth more than £200,000.\textsuperscript{30}


\textsuperscript{29}Hamilton was a close friend of the undoubted sadist, Captain Hugh Pigott. His log is full of accounts of lashings for drunkenness, brawling and insubordination, and in 1802 he was dismissed the service for illegally punishing an elderly seaman by stringing him up in the rigging. Despite this, he was appointed commander of the royal yacht in 1806.

\textsuperscript{30}D. N. B. The statutory shares of prizes captured by Royal Navy ships were: Admiral, an eighth; Captain, a quarter; Lieutenant, Master, Surgeon, together, an eighth; Lieutenant of Marines, Commander-in-Chief's Secretary, Senior Warrant Officers and Masters' Mates, together, an eighth; Midshipmen, inferior Warrant Officers and other Mates, together, an eighth; rest of crew, a quarter. Thus, if the figure of £200,000 was accurate, Hamilton would have received £50,000, Sir Hyde Parker £25,000 and the 150 or so crew members, about £33 apiece. See Royal Proclamation published in Jamaica \textit{Royal Gazette}, July 13, 1793, 1-2. Other successful Royal Navy vessels on the Jamaica Station during the French Revolutionary War were H.M.S.S. \textit{Magicienne} (25 vessels libelled, 1793-7); \textit{Penelope} (1793-5, 34); \textit{Irresistable} (1794-5, 30); \textit{Albacore} (1796-1801, 24); \textit{Diligence} (1796-1800, 46); \textit{Jamaica} (1796-9, 24); \textit{Lark} (1796-1800, 30); \textit{Regulus} (1796-9, 21); \textit{Abergavenny} (1797-1800, 35); \textit{Pelican} (1797-1800, 25); \textit{Acasta} (1798-1801, 45); \textit{Trent} (1798-1800, 41); \textit{Volage} (1798-1801, 21); \textit{York} (1798-1800, 28), \textit{Meleager} (1799-1801, 21); \textit{Circe} (1800-1, 24), \textit{Nereide} (1800-1, 31).
Plotting the thirteen cruises of the indefatigable Surprize produces a pattern that criss-crosses all the profitable trade routes of the central Caribbean. 31 The Windward Passage and its northern approaches was the most frequented area, but the Surprize was also found off the southern coasts of Santo Domingo and Cuba, around Puerto Rico and Curacao, along the Spanish Main, and lurking in the Yucatan Channel between Capes San Antonio and Corrientes. Independent cruising, preferable alone, was most popular with Hamilton, Laroche and their crews. Sometimes Surprize was ordered to cruise with one or two other warships, but not often did she act in close conjunction with them. 32 Even more rarely, privateers appeared hopefully at the scene of action; but they were regarded as jackals and their claims for distributive shares were invariably challenged. 33 Orders to join in the blockade of Hispaniola or to patrol a fixed station were not as welcome as a general licence to cruise. Least popular of all were cruises around the shores of Jamaica, though even here the ingenuity of her captains produced some valuable prizes for the Surprize.

During the 31 months that she was on the Jamaica Station, H.M.S. Surprize does not appear to have spent more than 39 weeks in port.

31 See accompanying table.

32 In this case, the naval ships hunted singly in the same general area. There are no cases of joint capture between H.M.S. Surprize and other ships of the Royal Navy.

33 In J.V.A. 2083, Jarricke, Haskins (April, 1799) the capture was decreed shared with the privateer Lark, Tucker. In J.V.A. 2102, Nuestra Senora del Carmen, Handy (August, 1799), the claim of the privateer Jack Shaw was challenged; but in J.V.A. 2103, San Josef, Ramires, the vessel was condemned to the Jack Shaw, which successfully claimed that H.M.S. Surprize had seized the prize she had already taken.
<table>
<thead>
<tr>
<th>No.</th>
<th>Date Range</th>
<th>Area Patrolled</th>
<th>Prizes Prosecuted at Jamaica</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>September - November, 1798</td>
<td>Windward Passage</td>
<td>(3) JVA 1767-9 <em>La Laurette</em>, Julius Caesar, Jason</td>
</tr>
<tr>
<td>2</td>
<td>December 9 - January 12, 1799</td>
<td>Windward Passage</td>
<td>(1) JVA 1769 <em>Willing Maid</em></td>
</tr>
<tr>
<td>3</td>
<td>February 15 - March 10</td>
<td>East End Jamaica-Navassa</td>
<td>(4) JVA 2074-8 <em>Industry</em>, La Reparateur, Peggy, Maria</td>
</tr>
<tr>
<td>4</td>
<td>March 16-27</td>
<td>Martha Harbour, Cuba</td>
<td>(3) JVA 2079-81 <em>Betsey</em>, La Lionne, La Carme</td>
</tr>
<tr>
<td>5</td>
<td>March 31 - April 19</td>
<td>Jean Rabel-Caicos</td>
<td>(8) JVA 2082-8; 2112 <em>Rainbow</em>, Jarrick, Friends, La Perseverance, Hopewell, Chien de Chasse, Britannia, Eagle</td>
</tr>
<tr>
<td>6</td>
<td>April 30 - June 17</td>
<td>Baracoa-Inagua</td>
<td>(2) JVA 2089-90 <em>Juno</em>, L'Amitie</td>
</tr>
<tr>
<td>7</td>
<td>July 6 - August</td>
<td>Hispaniola Coast</td>
<td>(13) JVA 2091-2104 <em>Sta. Catharina</em>, Carmen, Hannah, L'Elizabeth, Sta. Clara, Ben Ajene, Le Prince, La Poulette, St. Josef, N.S. del Carmen, San Josef, Le Holland and 2 unknown</td>
</tr>
<tr>
<td>8</td>
<td>September 9 - November 1</td>
<td>Puerto Cabello</td>
<td>(2) JVA 2105-6 <em>Santa Cecilia/Hermione</em> and one unknown</td>
</tr>
<tr>
<td>9</td>
<td>December - January, 1800</td>
<td>Alta Vela-Spanish Main</td>
<td>(7) JVA 2107-2111; 2443 <em>Concepcion</em>, Diligentia, La Maria, Rosano, Flora, Le Requin, Amphitorte</td>
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<tr>
<td>10</td>
<td>February 13 - April 29</td>
<td>Jacqmel-Mona</td>
<td>(9) JVA 2444-52 <em>Little Mary Theresa</em>, Jane Maria, La Union, Two Sisters, Zelpha, La Jalouse, Le Lienaskjold, Penelope, Resolution</td>
</tr>
<tr>
<td>11</td>
<td>May 20 - August 3</td>
<td>Yucatan Channel</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>September 3 - November 11</td>
<td>Alta Vela-Saona-Mona</td>
<td>(3) JVA 2453-5 <em>James</em>, Mahomet and one unknown</td>
</tr>
<tr>
<td>13</td>
<td>December 14 - January 30, 1801</td>
<td>Jamaican Coast</td>
<td>(3) JVA 2456-7; 2645 <em>Neutrality</em>, George Henry, Fancy</td>
</tr>
<tr>
<td>14</td>
<td>February 20 - May 13</td>
<td>Convoy to England</td>
<td></td>
</tr>
</tbody>
</table>
Obviously, this was the absolute minimum necessary for scraping and painting, mending the rigging and sails, re-arming, victualling and topping up the 56 tons of water that the warship carried. So great was the reliance of the Royal Navy on the Prize Courts that it was rarely necessary for the warships or captains themselves to come into port with their prizes. H.M.S. Surprize usually sent vessels she had detained directly to Jamaica under prize crews, and placed their prosecution in the capable hands of the Prize Agents Messrs. Donaldson, Forbes, Grant & Stewart.\textsuperscript{34} Apparently it was never necessary for the Surprize to be detained in Port Royal while her seizures were prosecuted, though the need to escort closely particularly valuable prizes sometimes brought her prematurely back to Jamaica.\textsuperscript{35} Likewise, voyages were occasionally abbreviated by epidemics of sickness aboard and the need to recruit replacements for the seamen who had died,\textsuperscript{36} and on one occasion, the Surprize had to return to port early in order to repair damage caused by being under heavy fire from the shore of Cuba for more than 24 hours.\textsuperscript{37}

Although tireless in chasing strange sails and in stopping and

\textsuperscript{34}Letters of Agency granted March 6, 1799.

\textsuperscript{35}Apparently, on the voyage ending on April 18, 1799; and certainly after the taking of the Santa Cecilia/Hermione in October, 1799.

\textsuperscript{36}For example, on the voyage ending on January 12, 1799, 14 men died of sickness.

\textsuperscript{37}Off Martha Harbour, Cuba, March, 1799.
searching neutrals, 38 H.M.S. Surprize was more successful than any other warship because of her audacity. Her speciality was cutting out prizes from enemy ports with small boats. At different times, valuable captures were made in the very harbours of Monte Christi in Santo Domingo, Puerto Cabello on the Spanish Main, Martha Harbour in Cuba, and Jean Rabel, L'Anse d'Hainault and Abricot in Hispaniola. On none of these occasions does there appear to have been any difficulty recruiting boarding parties, though once Captain Hamilton found himself obliged to punish an officer for returning to the ship without finding the entrance to an enemy harbour. 39

The most famous and heroic of the exploits of the Surprize was the retaking of H.M.S. Hermione from the harbour of Puerto Cabello on October 14, 1800. 40 Hermione, a 32-gun frigate, had been taken over by its crew on September 9, 1797 in one of the bloodiest mutinies in British naval annals. After brutally murdering Captain Hugh Pigott and his officers, the mutineers sailed to Puerto Cabello and handed the vessel over to the Spanish, who rechristened her the Santa Cecilia. H.M.S. Surprize had only

38 A typical entry in her log (March 26, 1800, near Mona Island): "Hodte. & clear, made all sail in Chace of a Brig 1/2 past 2 fired a shot & brought too the Chace & boarded her up Boat & made Sail in Chace of a schooner in Shore & Sent a Boat after her—at 6 sent the Mate with 6 men to take Charge of the Jane Marie from Curacao to New York rcd 11 men & 5 passengers a board. . . . at 7 bore up at 9 a strange Sail WSW at 10 made Sail in Chace which proved to be the Nymph short'd Sail & hove too at Noon fresh Breezes & Cloudy---"

39 Baracoa, May 12, 1799.

180 men and 28 guns to the Santa Cecilia's 392 men, 32 guns and eight carronades, yet every man volunteered for the boarding parties. After a savage hand-to-hand fight, the black-painted mutiny ship was taken by less than a hundred men in four small boats, led by Edward Hamilton in person; then towed out to sea under the fire of Puerto Cabello's massed guns.

Two weeks later, the Santa Cecilia was triumphantly towed into Port Royal, to be adjudicated in the Jamaican Vice Admiralty Court. Captain Hamilton was knighted for his exploit, and received the Naval Gold Medal, and the Freedom of the City of London in a gold box worth 50 guineas. Presumably he also received as much as a quarter of the £16,095.15.9d. at which the former H.M.S. Hermione was valued. Renamed Retaliation by Sir Hyde Parker—significantly changed to Retribution by the Admiralty—the recaptured frigate had a brief tour as a cruising warship, before being paid off in England in February, 1802. After Hamilton had been invalided home in April 1800 with wounds received at Puerto Cabello, H.M.S. Surprise continued her successful course, and libelled the last 15 of her prizes under the command of Christopher Laroche.

Like most Royal Navy ships after a tour of two or three years in the

41 J.V.A. 2106.

42 The mutineers were hounded down by a vengeful Admiralty. By 1805, 33 had been tried and 24 executed; Pope, passim.

43 Libelling five vessels at Jamaica in 1801: J.V.A. 2628-32, Carmen, Anna, Santa Clara, Seahorse, Anguilla (January to May, 1801). As H.M.S. Hermione, she had libelled 9 prizes at Jamaica in 1797; J.V.A. 1537-45.
Caribbean, she returned to England as escort to a convoy of sugar ships, in February, 1801.

The success of British naval operations in the Caribbean depended greatly on the energy, ingenuity and heroism of British naval captains and their crews; but clearly, without the compliance and the efficiency of the British Prize Courts such as the Jamaican, the work even of such "fire-eaters" as Edward Hamilton would have been far less effective. As a result of the combined operations of cruisers and Courts, overwhelming pressure was placed upon the enemy and their neutral carriers, and supplying the French, Spanish and Dutch colonies became something of a conjuring trick. As might have been expected from their performance in the previous war, it was the Americans who proved the most adept evaders of the rules of contraband and blockade, though with the eager connivance of the Danes of St. Thomas and St. Croix and the Swedes of St. Bartholemew. In unravelling the innumerable subterfuges, the Vice Admiralty Courts were tested to the utmost; with handsome profits the reward for successful detection of fraud, but reversals on appeal, ambassadorial complaints and the anger of metropolitan authorities as the penalties for error. Tracing the sinuosities of Prize cases involving neutral vessels, one is struck both by the tireless ingenuity of the neutral carriers and by the watchful scepticality of the officers of the Courts. With no physical danger involved

44 She escorted 46 sail in a 77-day voyage from Jamaica to the Downs, carrying 24 tons of specie, eight French prisoners and two alleged mutineers from H.M.S. Hermione. Laroche to the Lords Commissioner, May 13, 1801, Adm. 1/2066.
on either side, these cases have something of the flavour of an elaborate
game for high financial stakes; but a game in which the opponents were
quite worthy of each other.

The first, if unofficial, rule for neutrals carrying cargoes to or
from belligerent ports was, "Don't get caught". Almost as much as
belligerents not sailing in convoy, neutral carriers did their utmost
to evade the British cruisers, by taking unusual routes or scudding from
every sail they sighted. Armed resistance was tantamount to an admission
of guilt; but by no means so a spirited chase. The quarry could always
claim that it had mistaken the nationality of the pursuer; a plausible plea
at a time when even naval ships sometimes flew false flags until they came
within gunshot.

The log--probably fraudulent--of the American brig Two Sisters,
Pierce, captured on March 3, 1798 by the privateer ship Benson, Croasdell,
gives an excellent example of the spirit of the seachase, and the problems
it could set for either side. Captured off the west end of Puerto Rico,
the Two Sisters was condemned for carrying a Spanish cargo from La Guiara
and Puerto Cabello to St. Thomas. The log purported to explain why the
outgoing cargo had not been carried into British Grenada, its intended
destination:

(Friday, December 9, 1797) "At 6 Am Saw a Ship to ye Southwd
Standing to ye Northwd Aft he Spoke us hove too, the boat Came
on board, went on board ye Ship with the papers, He proved to
be the Tamar Captn Western an English frigate who told us
there was a spanish Privatear Brigtm Cruising about there,
at 9 Am Saw Barbadoes Bairing NWBN Distance about Eight Leagues.

(Sunday, December 10) at 2pm Bore away for the Grenadas, at the
Same time Saw a Sail Come out between the Grenadilloes who gave us Chace, haul'd our wind for the South Side of the Island, at Sun Sett the above Vessail which proved to be a Brigtn about Seven or Eight Miles from us Standing for us Night Coming on lost Sight of her, stood to ye Southwd & Westwd all Night, at day light Saw Grenada Bairing NE Distance about ten Leagues, it being Squally & A fresh Breeze Concluded to go to Leeward, the above Mentioned Brigtn wee took to be the Spanish privateer Mentioned by the Captn of ye friggate... 

Neutral vessels were often found by British cruisers in the most embarrassing places, but their masters were seldom stumped for a plausible excuse. The most common were falling to leeward, shortage of wood, water or provisions, stress of weather and enforcement by the enemy. The currents and the prevailing winds in the Caribbean are consistently easterly, and a sailing vessel that missed its destination downwind usually had great difficulty tacking back up to it. Since the majority of American vessels during wartime avoided the Windward Passage and took to entering the Caribbean through one of the eastern channels, it was always possible if a vessel were caught anywhere west of the Lesser Antilles for the master to claim that he had overshot his proper destination. These pleas were...

45 J.V.A. 1651. The master claimed that he had been forced to sell his cargo in La Guiara, but did not explain satisfactorily why he had also called at Puerto Cabello.
extremely common in Vice Admiralty cases, and sometimes may have been genuine. 46

A typical example of a suspicious plea was that by Ebenezer Riley, the master of the American brig _Recovery_, early in 1797. Sailing from Middletown, Connecticut with provisions, Riley said that he intended to land at Barbados, but falling to leeward had called at both Martinique and Grenada. From there he had intended to sail for St. Thomas, but again falling to leeward, had ended up at Aux Cayes. What was more difficult to explain was that he had then sailed over to Cartagena on the Spanish Main to complete his homeward cargo. Taken off the Isle of Pines on her way back to Baltimore with coffee, sugar and medicinal bark, the _Recovery_ had her cargo condemned for being French and Spanish property. 47

Taken when coming out from, or even seized within, an enemy harbour, a suspicious number of neutrals claimed to have been forced there by storms, a sprung mainmast, leaks or a shortage of essential supplies. 48 Even more claimed to have been forced into port and then forced

46 Instructions, even in peacetime, often included directions to trade at the Caribbean ports most convenient for landfall, wind and weather, as well as those with the most suitable markets.

47 J.V.A. 1566; taken by the privateer ship _Melpomene_, Johnston. She also carried $4-5,000 in specie.

48 For example, the brig _Maria_, Robertson, forced by strong currents to New Orleans and then by a thirty-day hurricane to Campeche; J.V.A. 2637 (1801); the schooner _Louisa_, Moodie, and the sloop _Alexander_, Coulet, both deflected into French ports on voyages between Kingston and St. Thomas in 1799 by alleged leaks; J.V.A. 1789 & 1848; the schooner _Eliza_, Caruth, deflected to Jeremie on a voyage from Baracoa to Cap Francois by an alleged shortage of waterland wood, J.V.A. 2170 (1799). All four of these examples were condemned. The famous brig _Nancy_, J.V.A. 2054 (1799, see below, 215-7) claimed to have been forced to visit Port au Prince by a broken mainmast.
to dispose of their cargo. The schooner **Lucretia**, Greene, sailing from Baltimore with dry goods in 1797, for example, claimed to have been taken into Gonaives by a French privateer and her cargo disposed of. Libelled in the French Admiralty Court at Cap François, she had been acquitted, and compensation paid for her appropriated cargo. Taken off Petit Trou by H.M.S. **Regulus** before she could make up a return cargo, the **Lucretia** was discharged.49

Some neutrals strengthened—or weakened—their cases by a multiplicity of excuses. The schooner **Julius Caesar**, Hill, taken by Captain Hamilton in H.M.S. **Surprize** in November, 1798, for example, had sailed from Norfolk, Virginia with a cargo of flour, corn meal and rum. Cleared for St. Kitt's, she had fallen to leeward, so had made for Jamaica. En route, she had been boarded and searched by H.M.S. **Swallow**, but allowed to continue. The voyage, however, turned out longer than expected and, falling short of water, the **Julius Caesar** had changed course for Jeremie in southern Hispaniola. Near the coast, she had been taken by a French privateer and carried into Aux Cayes. Although acquitted, she had been forced to dispose of her cargo and obtain a return lading of coffee at Aux Cayes and nearby Aquin. Vessel and cargo were condemned as French property, though the master appealed successfully for the return of his ship.50

Much weight was given by the Vice Admiralty Judges to the answers to the Standing Interrogatories, but the evaluation of ships' papers

49 J.V.A. 1586.

50 J.V.A. 1768.
was equally important, and much more difficult. Coloration—that is, the falsification of ships' papers—was much more general and profitable than the running of contraband of war or the evasion of a declared blockade. In fact, it would probably be true to say that the possession of a wholly accurate set of papers by a neutral carrier was more the exception than the rule. The Courts often had to decide on the bona fides of masters and owners who claimed to be neutrals, but really fraudulent claims to ownership were far more common than attempts to obtain temporary neutral nationality. If the evidence of all claimants was taken at its face value, an impression would be gained that belligerents very rarely owned ships, or ordered and consigned cargoes on their own accounts. In fact, cargoes and even ships owned by belligerents were temporarily made over to neutral masters or supercargoes, and goods consigned to or for a belligerent were entrusted for the record to spurious, even fictitious, neutrals.\textsuperscript{51}

The documents most often tainted with coloration, and therefore most numerous in the papers of Vice Admiralty Court cases, were registers and passports, bills of lading and clearances.\textsuperscript{52} Masters also

\textsuperscript{51}For example, in the case of the brig Neptune, Becker, condemned in April, 1801 as enemy property, one John O'Hara, a Kingston merchant, testified that ownership by "Henry O'Hara of Charleston, South Carolina", said to be his brother, was obviously fraudulent; J.V.A. 2647. See also J.V.A. 1234, the brig Rachael, Robinson (1793), a complicated ownership case, cleverly resolved.

\textsuperscript{52}For good examples of each of these, see J.V.A. 1848, Alexander, Coulet (false register, 1799); 1140, Winsey, Hunter (false register and passport, 1793); 1793, Medborgaren, Eyserman (false register and clearances 1799); and 2342, Freedom, Millet (false register and bill of lading, 1800). In J.V.A. 1442, Abigail, Hammond (1796), the master claimed that he was forced to sign a false bill of lading at Batavia.
made false logs\textsuperscript{53} and carried written instructions either studiously vague\textsuperscript{54} or intended to mislead, even to the extent of including disingenuous orders not to let them fall into British hands. Occasionally, blank clearances were seized, which masters were intended to fill in as and when circumstances demanded.\textsuperscript{55}

While neutral masters so often carried vulnerable cargoes or travelled with duplicate sets of differing papers, examples of papers being concealed or thrown overboard were very common.\textsuperscript{56} Seizing captains did their utmost to uncover these, or to prevent them being jettisoned, though affidavits concerning capture often include references to packets seen being thrown overboard towards the climax of a chase.\textsuperscript{57} The most

\textsuperscript{53}See J.V.A. 1651, Two Sisters, and J.V.A. 1975, note 55, below.

\textsuperscript{54}For example, J.V.A. 2074, the schooner Industry, Monk, the acquittal of which on a charge of being enemy property was appealed by the relators. The instructions carefully did not name any ports of destination, though the vessel, sailing from Philadelphia, called at St. Thomas and St. Croix and intended to visit Havana on the voyage back.

\textsuperscript{55}J.V.A. 2074 and 1975, the snow Betsey, Cameron, condemned in 1799 as Spanish property after a very dubious voyage from Charleston to Vera Cruz described in a log almost certainly fraudulent.

\textsuperscript{56}For example, J.V.A. 1208, the case of the schooner Two Friends, Coulon (1793) includes excuses for the lack of valid clearances and evidence of papers concealed and a French uniform thrown overboard. The ship was condemned as French property.

\textsuperscript{57}Cases of cargo being jettisoned are, of course, rare, though there is at least one case in the Jamaican papers of a deck cargo being thrown overboard to lighten a vessel during a chase.
celebrated case of a neutral being condemned on the evidence of papers unsuccessfully jettisoned was that of the American brig Nancy, Briggs, taken by Captain Wylie and the cutter H.M.S. Sparrow in 1799.58

Wylie had stopped the Nancy near Isle La Vache on August 28, 1799, and had sent her into Kingston under prize crew, but with only fair hope of a condemnation. Two days later, James Fitton, captain of the Sparrow's mother-ship H.M.S. Abergavenny, was having some sport between chases by fishing for sharks with a dead bullock as bait. Boating one monster whose backbone he fancied for a walking stick, Fitton ordered it dissected, whereupon an almost intact packet of papers belong to the Nancy came to light. Having dried the papers in the sun, scanned them and guessed their import, Fitton set a masthead watch for the errant Nancy. But it was the Sparrow which first came in sight, Wylie rowing on board the Abergavenny for breakfast.

"Well, Wylie, my boy, what luck have you had since we parted company?" asked Captain Fitton of his junior.

"I have taken a Dutch schooner and a French schooner and detained an American brig", replied Wylie. Then, seeing the disembowelled shark on the deck, he asked, "Why do you dirty your decks with those cursed animals? You'll be a boy all your lifetime."

"Tell me Wylie", said Fitton, apparently changing the subject, "was

58 J.V.A. 2054. The case papers are at Spanish Town; the ship's papers at the Institute of Jamaica, Kingston. The "Shark Papers Case" has been the subject of innumerable articles; for examples, see Columbian Magazine, viii, June, 1800, 680; Journal of the Institute of Jamaica, i, November 1891, 297-9; Marine Magazine, February 15, 1926, 2-3; Ports of Hull Annual, 1935, 60-1; Civil Service Outlook, June, 1941, 18-20; Mast, November, 1950, 26-30; New York Herald Tribune, June 13, 1953, 10; Harper's Monthly, xcv, vol. lxvi."
the American brig you detained called the Nancy?"

"Yes, she was. You have met her I suppose?"

"Was there not a supercargo on board her named Christopher Schulk of Baltimore?"

"Yes, his name was Skoolts or Schulte's or some damned Dutch name or other. Why, you must have spoke the brig."

"No I have not. I never saw her."

"Then how the devil did you know I had detained the American brig Nancy, Christopher Schulk supercargo?"

"The shark you see lying there has brought me full information about the brig Nancy, and these papers you see spread out to dry are the papers of your brig. . . ."

"There's a lie somewhere--not far off Fitton", claimed Wylie, suspecting a hoax, "for I sealed all her papers up and gave them in charge of the prizemaster when I sent the brig away."

"The papers delivered to you by the master when you overhauled him you have of course sent away with the vessel; but her true papers--which prove the owners to be enemies and not Americans--are those which you see drying on deck, brought to me by that shark you abuse me for catching!"

Wylie stared at Fitton, at the shark, at the papers, full of disbelief; then quickly descended the cabin ladder, calling out, "Breakfast, ho! None of your tricks upon travellers. None of your gumption, Fitton. Breakfast, ho!" The somewhat stolid Wylie did not fully believe his Captain's words until he returned to Kingston, where, Fitton having sent the shark's papers ahead, he found that the Nancy had been condemned to him as enemy
Apart from the coloration of ships' papers, the most common of all subterfuges was the trans-shipment of belligerent cargoes in a neutral port. After the Order-in-Council of January 8, 1794, many American carriers sailing from the foreign West Indies to Europe broke their voyages in American ports, which could be visited by but a slight deviation in the normal route. By decisions of the British High Court of Admiralty, however, a broken voyage required the unloading of cargo and the payment of duty, and until United States re-export duties were reduced to a nominal amount in 1798, it was easier for American carriers to trans-ship at one of the neutral ports of convenience in the Caribbean itself. Besides this, the normal sailing routes dictated that such ports as St. Thomas, St. Croix or St. Bartholemew were more convenient for the trans-shipment of goods outward bound from Europe than ports on the American mainland. The result was a tremendous efflorescence of the trade of the Caribbean ports of convenience during the latter period of the French Revolutionary War, particularly that of St. Thomas. As far as the records can tell us, at least 232 of the vessels libelled in the Vice Admiralty Court of Jamaica between 1793 and 1802 had been engaged in trade involving St. Thomas, of which no less than 166 were of St. Thomas registry. Some 134 were engaged in round-trips beginning and ending—at least officially—in St. Thomas; another 27 were engaged in voyages that originated in St. Thomas; the remaining 72 were engaged in voyages that included St. Thomas as a port of call, of which exactly half originated in the United States and half in other ports, mainly Caribbean. The peak year for St. Thomas

59On November 25, 1799. The case was unsuccessfully appealed.
<table>
<thead>
<tr>
<th>Port</th>
<th>Number of Uses total</th>
<th>As Port of Origin</th>
<th>As First Port of Call</th>
<th>As Destination</th>
<th>Round-trips</th>
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<td>204</td>
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Caribbean Ports of Convenience
1776-1783; 1793-1802
seizures libelled in Jamaica was 1799, when the 82 St. Thomas cases represented 20.25% of the Jamaica total.  

Although many decisions were appealed, a very high proportion of the St. Thomas cases between 1793 and 1802 resulted in condemnations. There are indications, however, that the seizures came from an almost inexhaustible flow. A list of the vessels registered at St. Thomas between January, 1798 and February, 1799, contains no less than 229 names, of vessels totalling 10,904 Danish lasts displacement; this in a port that may not have seen half a dozen vessels a year during peacetime. Among the 150 owners listed, were many with English, French and Spanish-sounding names; very few with names that were recognisably Danish.

The trade of St. Thomas was dominated by the merchants resident in the island, all with nominal Danish citizenship, though nearly all were Americans or disguised Frenchmen, Spaniards or Dutchmen. These merchants bought up incoming cargoes from North America or Europe, bought or chartered the necessary ships, and traded to and from the belligerent ports of the Caribbean. Even ignoring the fact that these "honest Danes" were often belligerents themselves, frauds could occur at every stage. Take, for example, the case of the sloop Polly, seized on February 22, 1796. The ship's papers included a bill of sale that Isaac Lopez, "Borger", had bought the Polly on August 13, 1795 from one Larelle, of unspecified—but suspicious—nationality. There was also a Danish

60 See accompanying table of St. Thomas trade.

61 In the papers of the schooner Two Sisters, Malartick, J.V.A. 2123.

62 The bill of sale was in French.
<table>
<thead>
<tr>
<th>Year</th>
<th>St Thomas - St Thomas Round Trip</th>
<th>St - Hispaniola - St Round Trip</th>
<th>Hispaniola - St - Hispaniola Round Trip</th>
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The Hispaniola Trade of St. Thomas, 1776-1802
register for the sloop, dated August 19, 1795. The Polly was commanded by Anthony Foss, who claimed Danish citizenship; but the cargo was in the charge of a supercargo, who turned out to be Larelle. This gentleman carried Instructions from Lopez, dated February 19, 1796, but they were so vague and unbusinesslike as to be obviously spurious. Clearly, Larelle was a Frenchman trading on his own behalf, and the Polly and her cargo were condemned as French property on April 5, 1796.63

The great majority of vessels registered in St. Thomas were involved, like the Polly, in round-trip traffic between the Virgin Islands and other Caribbean ports, mostly in Hispaniola. Other vessels were engaged in voyages that began in St. Thomas, called at a port in Hispaniola and then went on to an American port, before returning to Hispaniola. Such a vessel was the schooner Flying Squirrel, taken on the way to Norfolk, Virginia with a cargo of coffee by H.M.S. Diligence on November 17, 1798. The master of the Flying Squirrel, Henry Darrell, testified that an alleged St. Thomas Dane, Octavius Pogy, was "Owner of the goods Shipped at St. Thomas, and the same was Consigned to Examinant and he disposed of the same on the real Account risque and benefit of the aforesaid Owner at Jacqmel. That with the return of said Cargo Examinant purchased the Coffee. . . ." The Jacqmel bill of lading and other vital documents, however, were missing, and the Court, not satisfied with the

63 J.V.A. 1447. Seized off Cape Samana on her way to Fort Dauphin by H.M.S. Intrepid, she carried a cargo of dry goods worth (per invoice) $3,581.
bona fides of Mr. (or M.) Pogy, condemned both vessel and cargo as French. 64

After 1798, a suspicious number of vessels registered in St. Thomas had already been through the British Vice Admiralty Court at Tortola. They either carried certificates saying that they had been acquitted, or copies of decrees of condemnation accompanied by allegedly valid bills of sale. So common are these documents among the papers in Jamaica, that one is tempted to the conclusion that Tortola—only an hour's sail down the channel from St. Thomas—was in the business of supplying the merchants of St. Thomas with shipping in their need. 65 Such a trade was not entirely illicit, for it was quite legal to sell condemned vessels to genuine neutrals; but it is difficult to see what was to prevent a blockade-runner losing his vessel in Tortola and regaining it in St. Thomas by a exercise in legal legerdemain.

Rather more sinister were the suspicions—borne out perhaps by the number of vessels with Tortola clearances that were later condemned in the Jamaica Court—that the officials of the Vice Admiralty Court in Tortola were more kindly disposed towards the port of convenience trade of their neighbours than the law required. Before the reforms that preceded the Napoleonic War a Tortola trial appears to have been regarded

64 J.V.A. 1664, date of condemnation missing. Very few of the St. Thomas vessels condemned were cleared for Europe. Exceptions: J.V.A. 2036, brig Altona, Neth (bound for Altona, 1799); J.V.A. 2393, ship Isabella, Knight, (Copenhagen or Glasgow, 1800).

65 See, for example, J.V.A. 1718, Nautilus, Pritchett, (1798); 2036, Altona, Neth (1799); 2248, Mary, Oliver; 2392, Two Brethren, Harriott; 2393, Isabella, Knight (last three, 1800). The first Judge's Commission for Tortola is dated 1799, but the Court was in existence earlier, returns for 1793–5 being found in H.C.A. 49; see above, note 5.
as something of an inoculation; or at least as part of a course of treatments that included some crafty coloration in nearby St. Thomas. "I have been out and have been carried into Tortola", wrote Jesse Pritchett the owner of the Nautilus to his business partner Isaac Starr, in September, 1798, "where Vessell and Cargo had been acquitted and now can ensue the Voyage Freely I have become a Danish Burger and am Respected in that Capacity what I venture I get Insured here. If I make out to return Safe the Voyage will be very productive to me. . . ."

The port of convenience trade of Swedish St. Bart's was on a much smaller scale than that of the Danish Virgin Islands, though it showed many of the same features. Analysis of the 17 St. Bart's cases tried

66 J.V.A. 1718, Nautilus. Apparently she was formerly the Venner, since the Tortola release dated September 1, 1798 which she carried bore that name. It availed her little, however. The Nautilus, captained by Jesse Pritchett's brother John, was stopped coming out of Jacqmel with coffee for Philadelphia by H.M.S. Magicienne on December 16, 1798, and condemned as French property on January 29, 1799. Jesse Pritchett appears to have been something of a cad. His letter to Starr, innocent of punctuation, went on: "... do publicly Declare our late Partnership Dissolved or you will be liable to the penalties of the Intercourse Act as I am trading to French Ports but I do not consider myself a Subject of America but Denmark but be assured my utmost Exertion is to clear our house of Debt and I will never Cease to Exert myself till tis completed. . . ." There is also a splendid letter from Pritchett to another associate "... .in the mean time I am all moste married it is Not the Case yet but I Expect it will be in four or five days it is a devil of a pretty little mustea She is a little Couloured to be Shour but Damme Never minde the Coulor of the person So as their is no Defisientsy in the Coulor of the Cash. . . .it is a Damned fine Chance olde fellow what do you think of it. . . ."

67 For example, J.V.A. 2145, Nymph, Querard, condemned as French on December 1799, after being taken on a round voyage from St. Bart's that was intended to include Curacao, Gonaives and Santiago de Cuba.
at Jamaica between 1793 and 1802 shows that the vessels engaged in that branch of the evasion trade did not fare any better than those from St. Thomas. The most interesting vessel involved was the ship Medborgaren, Eyserman, of 200 tons. Originally, she had set out from Gotenburg for a voyage to the United States by way of St. Bart's, but after leaving the Swedish colony, while driven off course by bad weather, she was taken by a French privateer, carried into Santo Domingo and condemned in the Spanish Admiralty Court. Repurchased by the Supercargo, she was impressed by the Spanish authorities and sent to Jacqmel with 154 slaves and 29 passengers. Taken off Jacqmel on December 2, 1798 by H.M.S. Diligence, she was sent to Jamaica for adjudication. On February 28, 1799, the vessel was acquitted, but the slaves were decreed British recaptures. 68

The trials of the unfortunate Medborgaren, however, were not yet over. The original owners of the vessel were said to have been Ostrom Procter & Co. of St. Bart's; but somewhere down the line, she had been sold to one J. Haasum. On leaving Jamaica without a cargo, she was seized by H.M.S. Abergavenny on May 21, 1799. This time, the Prize Court uncovered frauds in the alleged ownership, and the Medborgaren was condemned as French property on June 24, 1799, being said to have been on her way not to St. Bart's but to Hispaniola. 69

The Medborgaren claimants appealed to London, and the case was added to the bulging dossier of complaints by the Danes and Swedes which

68 J.V.A. 1666, 1667. The slaves were said to have belonged to one Robert Bent of London.

69 J.V.A. 1793. Compare this with J.V.A. Betsey, Downs (1800).
helped to provoke the second Armed Neutrality in 1801. Many of these complaints concerned the actions of British cruisers in stopping, seaching and sending in for adjudication neutral vessels trading in the West Indies and the subsequent actions of Caribbean Vice Admiralty Courts. At this stage of the War, however, the British Government was not prepared to be as conciliatory towards Denmark and Sweden as she had been towards the United States in 1794. In the Triton case in March, 1799, for example, in which a Danish frigate had seized a prize being carried in for adjudication by a British privateer, the Advocate General gave his Opinion that the action was hostile to Great Britain, and that "a British Tribunal alone had the authority to release the captured Vessel. . . . it is not for the Commander of a Neutral armed Ship to decide upon the legality of such seizure, and to repel it by force, but the consideration must be referred to the Tribunals of the capturing State, and until Justice is there refused, hostile force cannot legally be resorted to." A similar Opinion was voiced in the case of the British privateers Dreadnought and Eagle, seized by the Danes for cruising among the Danish Virgin Islands.

Upon the whole I have the honour to report, that the Pretension set up in these Cases, of resorting to violence whenever the neutral considers his rights invaded, instead of seeking redress by available Representation and in the ordinary course of Justice is in my apprehension, contrary to the established Law and Practice of Nations, is not reconciliable to subsisting

70See, for example, the complaints by Ambassador Schoemberg concerning the actions of the Vice Admiralty Court of Tortola referred to in George Hammond to Evan Nepean, January 30, 1799, Adm. 1/4179, which Evan Nepean asked the Judge at Antigua to look into on February 5, 1799; Adm. 2/1067, 176.

71Opinion of Sir John Nicholl in Grenville to Lords Commissioner, March 1, 1799, Adm. 1/4180.
Treaties and tends to introduce a Rule of Proceeding by no means calculated to preserve the Relations of Peace and Amity between Belligerent and neutral States.  

The self-righteous pronouncements of the British Advocate General in 1799 and 1800, have a somewhat ironic ring in the light of British actions towards the neutral islands in the Caribbean in 1801. Just as soon as definite news reached London in January, 1801 of the formation of the Armed Neutrality, Henry Dundas sent secret orders to the military and naval commanders in the Leewards to seize the islands of St. Thomas, St. Croix, St. John and St. Bart's, and all Danish, Swedish and Russian goods discovered there. Although the captors were enjoined not to dispose of any vessels and goods except those that were shown to be French, Spanish or Dutch until his Majesty's Will was known, and to be particularly careful of United States property, the capture of the Danish and Swedish islands that immediately followed, obviously brought the ports of convenience trade in the Caribbean to a sudden stop.  

72 Opinions of Sir John Nicholl dated February 10, 1801, included with six pieces of relevant correspondence dating back to September 17, 1800; P.R.O. 30/42, 29, i.

73 Henry Dundas to Lieutenant General Trigge, Downing Street, January 14, 1801, marked "Most Secret", accompanied by secret orders to colonial Governors to seize all Danish, Swedish and Russian property; Adm. 1/4186.
Commentators critical of the ideals of international law are inclined to maintain that the Law of Nations is simply a law by which the strong impose their will upon the weak.\textsuperscript{74} Certainly, the events of the French Revolutionary War indicated that the British Vice Admiralty Courts in the Caribbean—which claimed the mandate and the authority of international law—were extremely capable machines for condemning prizes when backed up by British naval hegemony. In times when the power of enforcement was lacking, however, they were less effective; and as agents of a more flexible imperial policy they betrayed definite limitations.

During much of the French Revolutionary War it was to the interest of the British government to follow a policy more solicitous to the neutrals than had been customary in previous wars. The Americans in particular, whose trade with Britain itself was more important than it had ever been and whose wartime co-operation in the Caribbean was also sought, were treated kindly throughout the War. But this novel flexibility—quite easily assumed by the High Court of Admiralty and the Court of Appeals—was not easily conveyed to the Vice Admiralty Courts in the Caribbean. Orders-in-Council always took months to come into effect in the West Indies and corresponding decisions in the High Court of Admiralty and Court of Appeals filtered down to the lesser Courts even more slowly, and when appeals procedures for Americans were made more realistic in 1794, the number of appeals against Caribbean decisions soared until they amounted to

\textsuperscript{74}This point of view is expressed very well, for example, by Burt, \textit{United States}, 211.
over 25% of the total of neutral cases. 75 Admiralty lawyers in England had few objections to this surge of business, but the imperial government was concerned by the limelight which appeals cases—and the ambassadorial complaints which almost invariably accompanied them—focused on the actions of the Vice Admiralty Courts, over which they obviously held far less control than they would have liked.

After 1793, the Vice Admiralty Courts in the Caribbean were shewn to be inflexible, inexpert, and occasionally, corrupt; but, from the standpoint of imperial authority, their chief fault was that they were too numerous. The index of Vice Admiralty Court activity had always been the prospects of profit which they offered. In peacetime, it had proved impossible to provide the minimum Admiralty Court service necessary for the efficient operation of the Mercantile System; yet in wartime, the number of Vice Admiralty Prize Courts outran the dictates of efficiency, impartiality and imperial control. It was Sir William Scott, particularly after he became Judge of the High Court of Admiralty in 1798, who drove home to the British Government the truth that in order to raise the professional standards of the Vice Admiralty Courts, to eradicate corruption and to increase their responsiveness to imperial control, it was necessary first to reduce their numbers to a manageable few. The only flaws in this argument were that even this nucleus of efficient and

75 In Jamaica, there were 1161 cases resulting in condemnations between 1793 and 1802, and 277 appeals, a percentage of approximately 24; but since a high proportion of the 705 condemnations made for being enemy property were not worthwhile appealing, and only some 420 cases definitely involved neutral vessels, the percentage of appeals by neutrals was almost certainly higher, perhaps as high as 60%. See table of Jamaican cases, above, 265-67.
subordinate Courts was only viable in wartime when business flourished, or in peacetime if the metropolitan government continued to be dedicated to the old imperial system.
Chapter Nine: Caribbean Courts and the Last French Wars Phase Two, Reform and the Napoleonic War

The changes needed in the Vice Admiralty Court system, though they stemmed largely from American complaints during the first years of the French Revolutionary War, were not achieved until after 1801. It was therefore not until war was renewed in 1803 that the increased responsiveness of the Courts to imperial control became apparent. Yet, though the reforms had been made in deference to the neutrals, British policy after the death of William Pitt became progressively indiscriminate. Absolute domination of the Caribbean was sought as part of the world-wide maritime campaign against Napoleon, and once complete naval supremacy had been established, the susceptibilities of the neutrals were increasingly ignored. The inevitable process whereby the belligerency of all the remaining neutral powers was successively provoked, was regarded by the British policy-makers with equanimity. As the result of the declarations of war by Spain, Holland, Denmark and the United States, the neutral carriage of goods which alone had sustained the French colonies, was extirpated, the French West Indian empire was extinguished, and Britain obtained, for a time at least, the practical monopoly of the trade of the Spanish American empire. In this last triumphant phase of the wars, the reorganised Caribbean Vice Admiralty Courts were extremely active though it was to prove one last blaze of activity before peace consigned them to
an even greater obscurity than they had ever previously suffered.

The proliferation of the Vice Admiralty Courts of the Caribbean had been one of the grievances of the American traders at the beginning of the French Revolutionary War. For various reasons consolidation was not incorporated in Jay's Treaty, but further American complaints and the reforming influence of Sir William Scott led Lord Grenville to reduce the Caribbean Prize Courts from 14 to two just before the signing of the Truce of Amiens. Once the Vice Admiralty Courts had been reduced to a manageable nucleus—which eventually numbered six Courts in the Caribbean with full jurisdiction—further reforms inevitably followed, until the Courts became almost totally responsive to imperial policy. The extent of the reforms and the degree to which the Courts had become agents of an imperial system can be gauged by the fact that after 1803 complaints against the Courts themselves became fewer, and protest was concentrated on the system of which they had become an integrated part.

With the establishment of absolute British naval supremacy in 1805, the Caribbean was no longer the scene of major naval engagements. But the Napoleonic War after 1805 became almost as much a commercial as a military and naval conflict, and in the gigantic British effort to blockade the parts of the continent of Europe under Napoleon's control and to cut off their supplies at source, the carefully nurtured friendship of the young United States was progressively jeopardised. Grievances occasioned by the British Orders-in-Council and the activities of British cruisers, were exacerbated by the general rivalry that existed between British
and American merchants for the trade of newly independent Hispaniola and for the parts of the Spanish American empire rapidly approaching independence, until the United States eventually declared war against Britain in 1812. Both in the events that led up to American belligerency, and in the spurt of naval and privateering activity that characterised the American war, the reorganised Vice Admiralty Courts of the Caribbean played an important part.

During the French Revolutionary War, Vice Admiralty Courts had been so numerous that it was impossible adequately to control them from London, let alone to staff them with competent personnel, and these conditions were blamed for the rash of injudicious condemnations that almost provoked the United States into war in 1794. "It is a Matter of Publick notoriety", wrote Sir William Scott in 1806, "that during the last war the Prize Courts in the West Indies were, with very few Exceptions, administered in such a manner as to provoke great complaints from various foreign Governments in Alliance with His Majesty", and he went on to single out particularly the Courts of the Leewards and Virgin Islands.¹

As early as 1779, the Vice Admiralty Judge at Antigua, whose own activities had not escaped censure, had complained that he had no control whatsoever over the satellite Courts of St. Kitt's, Montserrat, Nevis, Anguilla and Tortola,² and the subsequent years had not increased greatly either the control of the metropolis over the Antiguan Court, nor that of the Antiguan Judge over the other Courts in the Leeward Islands.

¹Scott to William Marsden, July 6, 1806, Adm. 1/3898.
²Edward Byam to Philip Stephens, February 13, 1779, Adm. 1/3885.
confederation. From the point of view of the High Court of Admiralty, the customary actions of such subsidiary West Indian Courts were at least two stages removed from acceptable practice. In a barb aimed at James Stephen, then the most prominent advocate before the Court of Prize Appeals, Sir William Scott wrote:

I intend not to offer him the slightest Dis respect when I say, that I trust he did not acquire his knowledge of this Sort of Law in the Court of St. Christophers, which every Man who has attended the Cockpit knows to have been singularly disting­

While negotiating with John Jay in 1794, Lord Grenville became convinced of the advisability of reducing drastically the number of Prize Courts in the Caribbean, and he persuaded the Government to agree to the abolition of all Prize Courts save those of Jamaica and the Leewards. The Law Officers when asked for their Opinions, however, pointed out several difficulties. The new Courts would have to differ radically from the present ones, particularly in the Leewards, where none of the six Courts enjoyed superior jurisdiction. If new Courts were erected, a new commissioning procedure would be required, since it was usual to grant prize jurisdiction to all Vice Admiralty Courts. With different Courts, the question of concurrent jurisdiction would be unnecessarily complicated, as would the question of appeals in cases already pending. Besides, there were

3Scott to Marsden, July 6, 1806, Adm. 1/3898.

4Referred to in Grenville to Lord Portland, November 9, 1794, Dwayne MSS 111, 533. In one letter to Grenville, John Jay referred to West Indian Judges and privateers as being "not better than Indians"; Jay to Grenville, March 21, 1795, ibid.
the questions of the privileges of Governors to erect Vice Admiralty Courts and to issue letters of marque in conjunction with Vice Admiralty Judges, and of the rights of persons already holding office under the Admiralty Seal in the Courts threatened with extinction. At the very least, the Law Officers concluded, a whole new Act was called for, in the drafting of which great care would have to be taken to avoid conflicting with the Prize Act of 1793 and other Acts already in operation.⁵

In the event, Jay's Treaty was signed without the consolidation of the Caribbean Vice Admiralty Courts; yet Lord Grenville had by no means abandoned the notion of consolidation and reform. On November 9, just ten days before signing the Treaty Grenville wrote to Lord Portland:

In the course of the discussions with Mr. Jay, which are, I hope, now brought to a satisfactory issue, a great deal has passed respecting the Prize Courts in the West Indies, and the facts mentioned by him, together with those which have in other ways come to my knowledge, have satisfied me of the necessity of providing some effectual remedy for the evils arising from the present frame and constitution of those Courts. Unless this can be done, there is, I fear, no hope of establishing any permanent good understanding with America, for let us make what regulations we please by Treaty, the West India and Bermuda Privateers will continue their depredations upon the American Trade as long as they find in the West Indies Courts disposed to countenance their proceedings. . . .

Supposing a Controlling Power in Parliament respecting both the Prize Courts and the Courts of Vice Admiralty in the Colonies, which I apprehend clearly exists, those being strictly matters of Imperial nature, I should suppose there could be no

⁵Law Officers to Portland, August 9, 1794, P.R.O. 30/8, 351. At that time, Sir William Scott was Advocate General, his brother Sir John Scott Attorney General, and Sir John Mitford, later Lord Redesdale, Solicitor General. From Sir William Scott's lukewarm attitude to reform at this stage, it would appear that he was converted by Lord Grenville's enthusiasm some time after August, 1794. Grenville, Jay and Scott dined together in Downing Street on March 24, 1795, to discuss the Prize Court question, and thereafter Grenville and Scott were in complete accord; Grenville to Jay, March 20, 1795, Dropmore MSS 111, 37.
difficulty in uniting all the Vice Admiralty Courts into one, as
well as all the Prize Courts. If it were necessary, the several
Judges of the present Courts in the different Islands might
all be Members of the New Court; and might continue to reside in
the separate islands to do such Acts relative to Causes brought
into the General Court, either of Vice Admiralty or Prize, as might
properly be done by Single Judges out of Court. And the General
Court might and ought to be an Itinerant Court, holding its Sessions
in all the Islands. And the Appointment of One Civilian of Character
and Abilities, to preside as Chief Justice, would operate as a
great check on the proceedings of the Court in each Island. There
would also be derived from this arrangement the advantage of
Uniformity of Practice and Decision; a point in which the present
System is greatly defective.

These statesmanlike suggestions, which foreshadowed the later reforms
in the Vice Admiralty Courts, were evidently too radical for the entrenched
conservatism of Doctors' Commons. Over the following six months, Lord
Grenville considerably modified his plan, accepting the necessity of keeping
at least five Courts; in the Royal Navy bases of Antigua, Jamaica and
Barbados, in Grenada and in the recently captured island of Martinique.
It was in this relatively subdued vein that Grenville wrote to John Jay
just after the plenipotentiary had returned to the United States, in May,
1795:

I have not been unattentive to the points which remain to be settled
here. One of the most material is, I flatter myself, at length in
a train of being well arranged; I mean that which relates to the
Admiralty Courts in the West Indies, which it is in contemplation
immediately to diminish in point of number. . . .Knowing, as I do,
how much evil has been produced by the multiplication of these courts,
I look to this reduction with very sanguine hopes. But I hope the
reduction will not stop there, but that the effect of it may lead
to render the practice of those which will remain more correct and
cautious than I fear it has hitherto been. . . .

6Grenville to Portland, November 9, 1794, Dropmore MSS 111, 533,
and in "Portland" file at Boconnoc.

7Grenville to Jay, May 11, 1795, Dropmore MSS 111, 69. Jay had left
England on March 31.
Other concerns, the diminution of American complaints and the opposition of the Judge of the High Court of Admiralty, Sir James Marriott, to direct interference by government in Vice Admiralty affairs,8 delayed action, and the questions of consolidation and consequent reform were not reopened until 1799. By then, Sir William Scott was Judge of the High Court of Admiralty and the forthright Rufus King was American Ambassador in London. In 1799 and 1800, King bombarded the British Government with renewed complaints of the actions of British cruisers and Admiralty Courts, and reminded Lord Grenville of the promise made by the Government to reduce the number of Prize Courts in the West Indies, even to two.9 In December, 1800, Lord Grenville asked the Lords Commissioner of the Admiralty for action in restricting the Caribbean Prize Courts to those in Jamaica and the Leewards, and this time the Law Officers, when asked their Opinions, gave unqualified approval to the scheme.10 The earlier objections had perhaps been eradicated by the bitter experiences of six years of difficult American cases in the Court of Appeals. As a result, the prize commissions of all West Indian Vice Admiralty Courts save those in Jamaica and Martinique were abrogated by authority of a

8 For example, Marriott to Evan Nepean, May, 1797, Adm. 1/3892.

9 Referred to in Grenville to Lords Commissioner, January 22, 1801, Adm. 1/4186. See also John King to Grenville, March 25, 1799, Adm. 1/4179; Sir John Nicholl to Lord Hawkesbury, March 15, 1801, P.R.O. 30/42, 29, 4 and above, IV, 113.

10 William Battine (Admiralty Advocate) to Lords Commissioner, January 11, 1801, subscribed to by Sir John Nicholl (Advocate General), January 12, Adm. 1/3895. Grenville's request is referred to in Lords Commissioner to Battine, December 25, 1800, Adm. 2/1068, 326.
letter of Lord Grenville dated January 22, 1801.\footnote{Grenville to Lords Commissioner, Downing Street, January 22, 1801, Adm. 1/4186, in which he claimed that George III had been consulted and approved. The Court at Halifax was also retained. Orders of revocation were certainly sent out only to the Judges in Bermuda, Newfoundland, Quebec and Lower Canada; Adm. 2/1069, 71. The Judge at Barbados at least was not informed; John Sullivan to Evan Nepean, January 4, 1804, Adm. 1/4194; and below, 236.} The choice of Jamaica, the busiest and most reliable Court, was to be expected: that of the young and inexperienced Court of Martinique was less predictable. The Court in the recently taken island of Martinique, however, would not be susceptible to the type of local influences for which the other Courts of the Windwards and Leewards had been notorious, and the choice would lessen the jealousy that would have followed the selection of Antigua on the part of the petty Courts of the neighbouring British Leewards.

Following Lord Grenville's decree of January 22, 1801, a bill was drafted and steered through Parliament "For the better regulation of his majesty's prize courts in the West Indies and America, and for giving a more speedy and efficient execution to the decrees of the lords commissioners of appeals."\footnote{Act of 41 George II, c.96, passed on July 2, 1801; above, V, 128.} In introducing the bill on April 29, 1801, Sir William Scott stressed the importance of retaining the friendship of the United States by reforming the Vice Admiralty Courts. Abuses had arisen, he stated, because emoluments were geared to business and the Courts had been too numerous to provide all officers with a comfortable income. In competing for business, the Courts had therefore tended to condemn nearly all vessels brought before them, and captains of cruisers—
being only human—had tended to go to those Courts which condemned most freely of all. Such "shopping" between Courts would be eradicated if the number of Courts were reduced and their operations were standardised. Scott maintained that all Vice Admiralty Court officers should be placed beyond the chance or temptation of corruption: the Judges by salaries and the other officers by regulated but adequate fees. By making emoluments attractive, he held, the quality of Judges, Advocates and other officers would inevitably be raised, since "he had in general found that talents that were to be purchased cheaply were seldom worth much." In concluding his speech, Sir William Scott made a bid for the Royal Navy vote, by pointing out that the bill made arrangements to save Royal Navy captors from having to carry their prizes from their stations to islands where there were Courts, and from the necessity of having to appoint an Agent if decisions were appealed to London. Besides this, vessels and cargoes prosecuted in the West Indies might now be carried for sale to the United Kingdom, rather than having to be sold in the West Indies, where, because of the glut, they were likely to fetch little more than a half of their true value.  

Accordingly, the Prize Court Act, which became law in July, 1801, awarded the Judges of the Vice Admiralty Courts of Jamaica, Martinique and Halifax salaries of £2,000 a year out of the Consolidated Fund, and

13 Parliamentary Register (Debrett), XV, 1801, 176-83. What Sir William Scott did not stress was that many of the provisions of the bill were for the benefit of neutral owners, as much as captors.
the chance of pensions of £1,000 a year under the terms of the Act of 39 George III, c. 110. The emoluments of other Judges were to be restricted to a maximum of £2,000 a year, accounts to be rendered semi-annually to the Lords Commissioner of the Admiralty. No Judge was to be a Prize Agent, to have shares in privateers, or "by anywise concerned in the Care, Management, or Superintendance of any Estates in any Island in the West Indies or on the Continent of America."

As to the payment of the other officers and the activities of the Prize Courts in general, His Majesty's Government was empowered to ordain by decree all fees, rules and regulations. Proceeds from sales before final decrees were to be lodged with the Register, not left in the hands of captors or Agents; but goods could now be sold in England by permission of captors and claimants, the proceeds being lodged in the Bank of England. The three Prize Courts were authorised to issue Foreign Commissions freely, and all prizes brought into other islands with Vice Admiralty Courts were to be regarded as having been brought into Jamaica, Martinique or Halifax. Procedures in appeals were made easier for captors and claimants alike, and the decisions of the Lords of Prize Appeals were ordered to be sent back to the Prize Court Judges for their future guidance. Finally, powers were

14 From the wording of the Act, it would also seem that Judges were still to receive fees in their non-prize capacities. In the debate on the 1805 Act, Admiral Pole claimed that the salaried Judges received £4,000 a year and in the 1812 Report on fees, the Vice Admiralty Judge at Malta was said to receive a salary of £2,000 a year, plus fees amounting to approximately £500. Cobbett's Parliamentary Debates, 1805, 132; James Bush to J.W. Croker, August 8. 1812, Adm. 1/3900.
reserved for "His Majesty on the advice of his Privy Council" to commission further Prize Courts when necessary, on exactly the same lines as those established at Jamaica, Martinique and Halifax.\textsuperscript{15}

The provisions of the Prize Court Act did not have time to come into effect before the signing of the Treaty of Amiens at the end of 1801, and the Court at Martinique never fulfilled the intentions of the framers of the Act because Martinique was restored to France by the terms of the peace.\textsuperscript{16} When war was renewed early in 1803, however, the reforms of 1801 quickly became effective, and within the first two years, the Caribbean Prize Courts had been welded into a system almost totally responsive to British policy.

The Jamaican Court, to which Dr. John Holland was appointed in 1803 on the special recommendation of Sir William Scott and sent out with a scale of suggested fees and orders to emulate the High Court of Admiralty,\textsuperscript{17} was intended to be the model for all Caribbean Vice Admiralty Courts; but it could not be expected to monopolise or adequately manage the entire volume of Caribbean Prize Court business. Accordingly, the Prize Act

\textsuperscript{15}Acta Regnorum, 1801, 204.

\textsuperscript{16}Along with St. Lucia, Desagada and the Saints. The occupied Dutch colonies were all restored, but Spanish Trinidad was retained; Lord Hobart to Lords Commissioner, April 29 and May 6, 1802, Adm. 1/4189.

passed in August, 1803, created additional Prize Courts with salaried Judges in Bermuda and the Bahamas. Besides these three Courts, Antigua was allowed to assume the functions of Martinique as the Prize Court for the Leewards and, after a period of doubt, Barbados was acknowledged as the legitimate Prize Court for seizures in the Windwards. The Judge at Barbados, however, was not granted a salary until 1809, and Judge Byam at Antigua, to his chagrin, was never salaried. Indeed, much of Byam's business was poached when the Vice Admiralty Court at Tortola—which he had always regarded as subsidiary to Antigua—was made the seventh, and last, of the consolidated Prize Courts of the Caribbean in 1804.

By 1804 the six remaining Prize Courts in the Caribbean provided a strong basic network. Four of them were presided over by Judges who fulfilled all the criteria of Sir William Scott and the 1801 Act, in that they were English citizens without West Indian interests, with qualifications

18Act of 43 George III, c.160. Malta was granted a similar Prize Court.

19Commissions for Prize Courts against the French were sent out on May 16, to the Leewards, Barbados, Bahamas and Malta, as well as to Jamaica and Halifax (Adm. 2/1070, 15), but the Governor and Vice Admiralty Judge in Barbados remained in doubt at least as late as November, 1803; Sullivan to Evan Nepean, January 4, 1804, Adm. 1/4194. The Judges of the Vice Admiralty Courts in Dominica, Grenada, St. Vincent, St. Kitt's and Tortola were definitely told that they did not enjoy jurisdiction in prize cases; Evan Nepean to Judges, September 24, 1803, Adm. 2/1070, 128.

20See above, V, 144, n.69.

21In the early months of the War, Judge Turnbull had merely received papers and held preparatory examinations on behalf of the Prize Court of Antigua. He was superseded by James Robertson in June, 1804, with full powers but no salary. Turnbull to Evan Nepean, December 26, 1803, Adm. 1/3896; Cely to Marsden, June 1, 1804, inscribed by Marsden, June 12, ibid.
CONSOLIDATION OF CARIBBEAN
PRIZE COURTS 1801-4

KEY
- Prize Courts, 1793-1801
- Act of 41 George III, c.96
- Act of 43 George III, c.160
- Prize Courts, 1803-4
gained in Doctors' Commons and with some experience at the Cockpit. Moreover, the Prize Act of 1803 had ordered that Registers should provide the Admiralty with semi-annual lists of prizes prosecuted and annual lists of personnel. From these changes, the metropolitan government could enjoy greater confidence in the personnel of the West Indian Courts and exercise greater control over them; and, for the first time, had some clear notion of the nature and volume of business done. Difficulties, however, remained; in the selection of personnel, the regulation of fees, the organisation of appeals and prize agents, and over the control of Vice Admiralty Courts which did not enjoy prize jurisdiction.

Although the incumbent at Jamaica, George Cuthbert, had been summarily displaced to make way for John Holland in 1803, there was not such a reservoir of eager professionals that this practice could be generally followed. Moreover, the sudden death of John Holland a few months after his arrival in the West Indies had not only dampened the enthusiasm of applicants, but rather tempered the zeal of the metropolitan government towards seasoned incumbents. The Court at Antigua was particularly resistant to change. Not only was Judge Edward Byam remarkably

22 Scott to Marsden, July 6, 1806, Adm. 1/3898.

23 By the Act of 49 George III, c.123, it was required that lists of prizes be sent quarterly, to Greenwich Hospital as well as the Lords Commissioner. The proper form, with columns for names of captors, names of prizes, dates and places of libels, dates and tenors of sentences, was enclosed in the General Orders of October 27, 1809, Adm. 2/1074, 325.
durable, but the offices of Register and Marshal were filled by absentee patentees whose influence in London was sufficient to enable them to survive the reforming fulminations of Sir William Scott.24

Where Judges were unsalaried and subordinate officers were absentees, the question of fees remained particularly troublesome; but even in Jamaica, Bermuda and the Bahamas, the scales of fees appear to have been governed by the ingenuity of the officers and only limited by competition from other Courts. The Government did not see its way clear to take advantage of the authority granted to it by the Acts of 1801 and 1803 to standardise fees until 1811, contenting itself with the clauses of the 1805 Prize Act ordering fees to be publicly exhibited and ordaining—rather vaguely—that charges in excess of the published scales would be penalised by the loss of office.25

The Prize Act of 1805 was chiefly concerned with appeals and the control of the proceeds of sales lodged with Prize Agents while appeals

24 Scott to Captain Molloy, February 24 and October 3, 1804, Adm. 2/1071, 3; Scott to Marsden, September 17, 1804, Adm. 1/3896: "...their Lordships as Guardians & Trustees for the Public Interests in these Matters are called upon to see that the actual execution is delegated to proper Persons & upon proper Conditions, and that it should not be entirely left to the Individual (who is himself generally unacquainted with the nature of the Duties) to pick up, on the cheapest terms, any...in the West Indies who will bid for it, though entirely unacquainted with Admiralty Practice. The reform of these Courts will be in vain looked for if this Practice is permitted..."

25 Act of 45 George III, c.72, Clauses XXXVIII-IX.
were pending. As such, it only touched the Vice Admiralty Courts indirectly and its measures were much more to the interest of the metropolitan Admiralty Courts. In fact, during the debate in the House of Commons in May, 1805, Admiral Sir Charles Pole went so far as to suggest that the bill should not be entitled "for the Encouragement of Seamen", but "for the Encouragement of Doctors' Commons." What was sadly lacking in the bill, he claimed, were provisions to avoid expensive delays, exorbitant fees and the boosting of appeal business by interested parties. Pole stated that during the French Revolutionary War, the High Courts of Admiralty tried 720 cases in a single year, no less than 560 of which were carried into the adjacent Court of Appeals, thus multiplying the business and fees of the same Admiralty lawyers and causing additional expenses and delays. Another opponent of the bill, Mr. Johnstone, asserted that the Vice Admiralty Courts of the Caribbean were even worse villains. Of the 318 American appeals made between 1793 and 1801, he claimed, no less than 259 were reversed, though not without expensive or even ruinous delays.26

In defending the Admiralty Courts, Sir John Nicholl argued that delays were inevitable and that undue haste would be foolish and unjust. Besides this, complaints of undue expense were grossly exaggerated. As to the Vice Admiralty Courts, the Chancellor of the Exchequer and the Judge Advocate were able to point out that most of the deficiencies had already been remedied, largely owing to Sir William Scott himself. Not only had the law concerning the carriage of belligerent cargoes by Americans been

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liberalised and clarified, but the Courts themselves and their personnel had been reformed by the Act of 1801. As an index of these improvements, the spokesmen for the Government claimed, the volume of West Indian appeals had fallen dramatically, though the actual business carried on by the Vice Admiralty Courts was not much less than it had been during the previous war.27

This point was obviously well made, and although the years between 1805 and 1810 saw continuing attacks in Parliament on the High Court of Admiralty and its officials,28 the general attitude to the Caribbean Vice Admiralty Courts was that they were performing their functions fairly and efficiently. Only after 1811, when the tempo of the War quickened and Admiral Lord Cochrane claimed to have uncovered scandalous overcharging and corruption in the Vice Admiralty Court of Malta29 was the Government forced to appoint a general commission to come to grips with the thorny question of Vice Admiralty Court fees. The commission's report, not completed until June, 1813, while it provided invaluable insights into Vice Admiralty Court practices, uncovered such variations and complexities

27 Ibid. Also, Scott to Marsden, July 6, 1806, Adm. 1/3898.

28 For example, on the administration of Admiralty Droits (1808) and the activities of Proctors, Prize Agents and the High Court Register (1810); Cobbett, 1808, X, 409; 1810, XV, 469; XVI, 12-14; XVII, 624-41, 650; 1811, XIX, 476-93; 1812, XXIII, 626. Papers listing the prizes adjudicated by Vice Admiralty Courts were called for in 1808 and 1810; Parliamentary Papers, 1808 (195), IX, 151; 1810 (196), XIV, 371.

29 Cobbett, 1811, XX, June 6 and July 17, 1811, 464, 985-1012.
and came so late, that nothing effective was done before the end of the War. The commissioners merely repeated suggestions made long before that the scales of fees charged should be based upon those of the High Court of Admiralty, with local weightings geared to the cost of living and the local value of sterling. Despite an endorsement from Sir William Scott for the "new" system, so flexible and ingenious were the methods for levying fees that most Vice Admiralty Court Registers were quite easily able to claim that this was the method they had always pursued, and carry on exactly as before.30

The Napoleonic War in the Caribbean naturally falls into three periods, divided by the British Orders-in-Council of 1807 and the American declaration of war in 1812; and the returns made by the Prize Courts from the beginning of the War permit a fair assessment of the effectiveness of the Prize Court system in prosecuting British policy.

The period of the peace of Amiens had seen grandiose efforts on the part of Napoleon to revive and expand the French empire in the Caribbean, and British policy on the renewal of war was finally to scotch Napoleon's "Western Design", while being careful not to antagonise the Americans and drive them into the arms of the French. This policy explains

30 The Commission of eight experts, headed by Sir Christopher Robinson, was appointed by the Lords Commissioner on November 14, 1811; Adm. 2/1075, 534. The last reports were collated on June 9, 1813, and Sir William Scott's endorsement made on June 21, 1813. The Courts covered, in order, were: Bahamas, Jamaica, Halifax, Antigua, Malta, Ceylon (1812), Barbados, Bermuda, Tortola, Sierra Leone, Bombay, Madras, Calcutta, Cape of Good Hope, Gibraltar, Newfoundland, New South Wales (1813); Adm. 1/3900-1.
the British acquiescence in the purchase of Louisana by the United States from France in November, 1803, and the readiness of the British in 1804 to enter into a convention with the ruler of Hispaniola, Dessalines, against the French and in collaboration with the Americans. 31 During the first period of the War, in fact, the British Government was much less reluctant to run the risks of war with Holland and Spain than with the United States. Holland was little more than a French puppet and a shadow of her former self; Spain had less control over her American possessions than ever before and Spanish naval power in the Caribbean was even weaker than the French. A Dutch war would eliminate one neutral carrier of supplies to the French colonies and a rival for British trade with Latin America, and would enable Britain to resume control over Dutch colonies given back to Holland in 1801. A Spanish war—while it was not eagerly sought—could only bring profitable plunder for British cruisers and further increase the control by British merchants over Spanish colonial trade.

The declaration of war by France in May, 1803 was followed by a British mobilisation in the Caribbean even more rapid and effective than that of 1793. Commissions for Prize Courts and letters of marque against the French were sent out immediately to Jamaica, the Leewards, Barbados and the Bahamas, to which Commissions against the Batavian, Ligurian and Roman Republics were shortly added. 32 The Dutch Guiana colonies were

31 See Lord Camden to Lords Commissioner, September 4, 1804, Adm. 1/4197, and Edward Cooke to Marsden, June 27, 1805, Adm. 1/4199.

32 May 16, June 16, August 22 and 28, 1803, Adm. 2/1070, 13, 19, 103, 107. Also, Hobart to Lords Commissioner, May 16, 1803, Adm. 1/4190; Sullivan to Evan Nepean, June 10 and July 30, 1803, Adm. 1/4191; John King to Evan Nepean, August 29, 1803, ibid.
occupied, ostensibly to protect them from the threat of a French invasion, and the French islands of Martinique and Guadeloupe were declared blockaded. The Vice Admiralty Courts initially chosen to be granted prize commissions in 1803 were those best situated to serve the naval and privateering bases designed to harass the French and Dutch colonies. Bermuda was not immediately selected largely because of the complaints by the Americans against the activities of the Bermudian privateers during the previous war; but the island was made a naval station for the first time in the first few months of the War and a Prize Court was erected at St. George's by the Prize Act passed in August, 1803.

Until the last, or American phase of the wars, Jamaica remained the most important British cruising base in the Caribbean, with the busiest Vice Admiralty Court; but in the first phase of the Napoleonic War, the Leeward Islands were almost as active in helping to clamp down on enemy trade. In the years from 1803 to 1806, 41 privateers were commissioned in the Leewards—the majority being from Antigua, but others

33 Hobart to Lieutenant General Greenfield, marked "Most Secret", June 10, 1803, Adm. 1/4191; Secretary of State to Lords Commissioner, December 23, 1803, Adm. 1/4193; Lords Commissioner to Judges at Antigua, Bahamas, Barbados, Bermuda and Jamaica, December 31, 1803, Adm. 2/1070, 230.

34 Between 1803 and 1815, the Jamaican Court dealt with 937 prize cases, compared with about 500 by Antigua. If cases adjudicated at Tortola were added to those judged at Antigua, however, the Leewards total of about 1030 exceeded the Jamaican total for the period of the Napoleonic War; H.C.A. 49/99; J.V.A. Minute Books, 1803-1815.
BUSINESS OF BRITISH PRIZE COURTS IN THE CARIBBEAN, 1803-1806

KEY
Shading, Royal Navy
Plain, Privateers (except Bahamas, Jamaica, Tortola where unknown)
from St. Kitt's, Nevis, Montserrat, Anguilla and Tortola—the same number as were commissioned in Jamaica for the whole of the War.\(^{35}\) In the same four year period, 259 prizes were adjudicated in the Prize Court at Antigua, 153 being libelled by Royal Navy vessels and 106 by privateers, compared with a total of some 550 at Jamaica.\(^{36}\) Under the terms of the 1801 Prize Court Act, seizures could be carried to any island with a Vice Admiralty Court, where vessels and cargoes could be lodged or sold and preparatory examinations made before final adjudication in the central Prize Court; and of the 135 prizes adjudicated at Antigua in 1803 and 1804, only 54 had been carried into Antigua itself, 39 being taken to Tortola, 14 to Dominica, 12 to St. Vincent, 10 to St. Kitt's and 6 to Nevis. In fact the convenience of Tortola for the detention of prizes taken while threading the waters around the Virgin Islands was one of the reasons for the erection of a separate Prize Court at Road Town, Tortola, at the end of 1804. Thereafter the Prize Court at Tortola rivalled that at Antigua as the most popular Court in the northeastern corner of the Caribbean, with Royal Navy captors even more than with privateers.\(^{37}\)

\(^{35}\) Of the 131 privateers commissioned in the Leewards between 1803 and 1815, 100 were owned in Antigua, 16 in Nevis, eight in St. Kitt's, four in Montserrat, two in Anguilla, two in Tortola and one in Ireland. Judge Byam to John Barrow, June 15, 1814, Adm. 1/3902. For Jamaican figures, Hinchliffe to Barrow, May 19, 1814, ibid.

\(^{36}\) H.C.A. 49/99; J.V.A. Minute Books, December, 1803 to March, 1815.

\(^{37}\) There were 528 cases adjudicated at Tortola between 1805 and 1815, but the figures for Antigua after 1808 are missing in H.C.A. 49/99. As far as the records show, the number of vessels libelled by the Royal Navy far exceeded those brought in by privateers.
The effect of the combined actions of British cruisers and Courts after 1803 was to preclude the carriage of goods in enemy vessels more completely than ever before. Of 243 vessels libelled at Tortola between 1805 and 1808, for example, only 5 were of indubitable French nationality, and none Dutch. Except for 11 vessels that turned out to be British and 54 Spanish vessels seized soon after the Spanish declaration of war in 1805, all the remainder were neutrals; 65 flying the ensign of the United States and no less than 97 sailing under Danish colours. The American vessels had nearly all been engaged in disguising continuous voyages by calling at American ports while sailing between Europe and the foreign West Indies, and the so-called Danes had been involved in the well-tried port of convenience trade of the Virgin Islands. Both of these subterfuges, as James Stephen pointed out in War in Disguise (1805), were serious loopholes in the absolute blockade of enemy ports.

Before 1806, British policy towards the neutrals had been remarkably liberal. Americans and other neutrals had been allowed to trade freely between the ports of the enemy and their own ports or the ports of the United Kingdom, on the assumption that British trade was thereby aided. Besides this, the Caribbean free ports had been even more active

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38 H.C.A. 49/99. The remainder were Swedish (9), Hamburgers (4), Portuguese (2) and Ragusan (1). The Spanish declaration of war was followed by the order for general reprisals and Commissions for letters of marque and Prize Courts on January 11, 1805; Lord Camden to Lords Commissioner, Adm. 1/4198; Adm. 2/1071, 101-5.

39 Above, V, 167-170.

40 For example, Pelham to Lords Commissioner, June 24, 1803, Adm. 1/4191 (direct neutral trade with colonies); John King to Marsden, August 20, 1805, Adm. 1/4200 and Adm. 2/1071, 320 (trade between enemy colonies and the United Kingdom); Additional Instructions of July 29, 1805, Adm. 2/1071, 265 (export trade to enemy ports in enumerated British goods).
than in peacetime, and even after the declaration of war by Spain an
extensive trade was carried on with the Spanish colonies under licence.  
But with the death of William Pitt and the gradual tightening of the
economic war in Europe by the closing of the Elbe, the Berlin and Milan
Decrees, and the first of the countervailing British Orders-in-Council,
the era of good will and relative free trade in the Caribbean was replaced
by a more imperious British policy.  

This was made possible by the
attainment of absolute naval supremacy by the battle of Trafalgar in
October, 1805, and the presence in the West Indies of a very large force
of cruising warships and a system of Prize Courts completely responsive

41 See for example, John Sullivan to Evan Nepean, September 24, 1803,
Adm. 1/4192; Sullivan to Marsden, March 6, 1804, Adm. 1/4195 (Free Port
and Licence Trade during wartime); Additional Instructions of February 1,
1805, Adm. 2/1071, 123 (provision trade with belligerent Spain).

42 Pitt died in January, 1806; a blockade from Brest to the Elbe
was declared on May 16, 1806; the Berlin Decree was dated November 21,
1806, the Milan Decree, December 17, 1806. The first British Order-in-
Council ordering the detention of neutral vessels trading with Napoleonic
ports was passed on January 7, 1807; Eli Hecksher, The Continental System,

43 Symbolic of this was the fact that in May, 1806, British policy-
makers advocated the countering of the use of Danish St. Thomas by the
creation of a Free Port at British Tortola (Cobbett, 1806, VII, May 19);
yet by the following year they ordered the conquest of the Danish Virgin
Islands; see below, 327, n.49.
to the British imperial will. The second period of the Napoleonic War in the Caribbean was therefore characterised by an initial spurt of neutral seizures, the provocation of Denmark into war, and the systematic British conquest of enemy colonies. Spanish colonies were probably spared a similar fate only by the ending of the Anglo-Spanish War in July, 1808, an Anglo-American war only averted by the assimilation of belligerent colonies with which the Americans could trade. There was not, however, an improvement in Anglo-American relations, but a deterioration, as the Americans grew progressively dissatisfied with the methods of the British blockade of the European continent, and increasingly uncomfortable with the virtual monopoly which the British now exercised in the Caribbean.

The period between the beginning of 1807 and the middle of 1808 was the busiest for the Caribbean Prize Courts during the entire Napoleonic War. Retaliating to Napoleon's declaration of a blockade of the British Isles and the seizure of all British goods as contraband, the British

44 According to most American commentators, the most blatant example of this was Sir William Scott's decision in the Essex case in May, 1805, and its assumption into general practice. By various decisions made in 1801 it had been held that the landing of goods and the payment of duties were sufficient to constitute a broken voyage. But since then, the American Government had allowed wholesale remission of duties by drawbacks, and the Essex decision held that where drawbacks were employed, the voyage could not be said to have been broken. British mercantile interests had been quite prepared to accept the earlier definition of Broken Voyage because the cost of unloading and payment of duties had priced the Americans out of competition. The Essex decision made them happy again. Captain A.T. Mahan, Sea Power and its Relations to the War of 1812, London, Sampson Low, 1905, I, iv, 101-4.

45 The Order-in-Council ordering hostilities to cease and the ending of the blockade of all Spanish ports save those in French occupation, was dated July 4, 1808, Adm. 2/1073, 420.
BUSINESS OF BRITISH PRIZE COURTS IN THE CARIBBEAN, January, 1807-June, 1812.

KEY
Shading, first half of period
Plain, second half of period
Government forbade neutral trade between ports under Napoleon's control by an Order-in-Council of January 7, 1807 and followed this up by a policy of general neutral seizures which reached a climax in the Orders-in-Council of November 11, November 25 and December 18, 1807, and March 30, 1808.  

In the Caribbean this entailed the complete denial of the right of neutrals to carry on trade with the French and Spanish colonies. Numerous British cruisers patrolled the Virgin Islands with superb disdain for Danish complaints, and the majority of the 699 vessels libelled in the Prize Courts of Jamaica, Tortola, the Leewards and Bahamas between January, 1807 and June, 1808, were either Americans or ostensible Danes engaged in broken voyages or in the use of the ports of convenience in the Virgin Islands.

One result of the draconian British policy of 1807 was a tendency for neutral maritime powers which no longer enjoyed the benefits of neutrality to join in the War on Napoleon's side. In November, 1807, Denmark followed the example of Prussia and Turkey and declared war against Great Britain, to be followed in turn shortly afterwards by many of the Italian states and Russia. Denmark's brave stand availed her little, for the orders for general reprisals against Denmark were

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46 Adm. 2/1073, 98, 164; 1074, 141-6; Hecksher, Continental System.


48 Commissions for letters of marque and Prize Courts against Prussia were issued on May 23, 1806, against Turkey, May 13, 1807, Tuscany, Naples, Ragusa and French-occupied parts of Italy, November 4, 1807, Russia, December 18, 1807; Adm. 2/1072, 21-5, 386; 1073, 86, 184.
followed almost immediately by the British reoccupation of St. Thomas, St. John and St. Croix and the snuffing out of their trade with the French and Spanish colonies.\textsuperscript{49} Deprived of supplies and outlets for their produce, the French colonies were now completely vulnerable, and all were occupied almost at will by British forces between 1807 and 1810. Relations between Great Britain and the United States became almost as severely strained in 1807 and 1808 over the seizures of American vessels as they had been in 1793 and 1794, and this time there was little prospect of a healing treaty.\textsuperscript{50} With the passage of the Non-Intercourse Act by Congress at the beginning of 1809, the situation became critical, and the tension was only eased by the abrogation of many of the objectionable clauses of the British Orders-in-Council by the General Orders of March 13, 1809.\textsuperscript{51} This détente, however, was less a consequence of American diplomatic pressure than of the conquest by the British of their enemies' colonies in the Caribbean. This imperial sweep was not only a victory in the general British blockade of Napoleon's Europe, but also had the useful effect of decreasing the number of American seizures necessary to maintain it.

\textsuperscript{49}General reprisals ordered November 4, 1807, Adm. 2/1073, 77.

\textsuperscript{50}The proposed treaty signed by Pinckney on December 31, 1806, was rejected by Jefferson in March, 1807, and the later Orders-in-Council made the reopening of negotiations almost impossible; Burt, United States, 237-8.

\textsuperscript{51}Adm. 2/1074, 141-6.
After 1808, the business of the Caribbean Prize Courts dried up to a trickle, particularly after orders were received to restore American vessels already seized. The Bahamas Court, before which 77 vessels had been libelled in 18 months of 1807 and 1808, for example, adjudicated 20 in the last half of 1808, but only 21 in the period from January, 1809 to July, 1812, no less than 12 of which were ordered restored. The entire business of all Caribbean Prize Courts in the 18 months before the United States entered the War, was little more than a tenth of that enjoyed in the 18 months after January, 1807. 52

Neither the relaxation of the British Orders-in-Council nor the virtual end of American seizures in the Caribbean were more than temporary emollients. It was only a matter of time before the Americans began to search for profitable substitutes for the Caribbean trade cut off by British conquests, particularly through their newly acquired port of New Orleans. They found, however, that not only had the British treaty with Spain in July, 1808 given Great Britain decided advantages in trade with Spanish colonies, but also that the British authorities appeared to be as eagerly applying the principles of British Mercantilism to their newly gained colonies as to the old. The free ports were as wide open as they had ever been, but their operations were cunningly designed to act to the advantage only of British merchants, and this pragmatic Mercantilism was

52 Total cases, 83, compared with over 700 in 1807-8. Tortola, 36, Jamaica, 25, Bermuda, 11, Bahamas, 11, Antigua and Barbados, 0; H.C.A. 49/99; J.V.A. Minute Books, 1803-15.
backed up by British Vice Admiralty Courts even in the new colonies.

In the established British colonies, the decline in prize business after 1808 certainly saw increased zeal in dealing with Instance and Revenue cases. Jamaica, for example, which had averaged 8.5 Instance cases a year from 1803 to 1808, dealt with 31 cases in 1809 and 30 in 1810, averaging 18.7 a year from 1809 to 1817.53 It is unlikely that the long-established non-prize Courts engaged in quite this level of business, for they appear almost to have faded away after 1801; but new British Vice Admiralty Courts with jurisdiction only in Instance cases were established in Trinidad, Berbice, Demerara and Essequibo, which remained British colonies after the War, and in Curacao, Martinique, St. Croix and Guadeloupe, which were given back to Holland, France and Denmark at the Congress of Vienna.54 These Courts enjoyed a considerable volume of business in the latter years of the War; Guadeloupe, for example, dealing with 43 cases during the brief three years of its existence, a fair proportion of which involved American vessels.55

American merchants found their operations restricted in the

53 J.V.A. Minute Books (Instance), 1803-17.

54 Original Patents are in Adm. 5/45-55; Trinidad and Curacoa, 1801, Berbice, St. Croix and Martinique, 1809, Demerara and Essequibo, 1811. For Surinam see Sir William Scott to Lords Commissioner, January 10, 1807, Adm. 1/3898; St. Lucia, B.T. 3/9, 125 and 5/17 (1807), and above, V, 124-5; Guadeloupe, H.C.A. 49/57 (1811).

Caribbean even when not engaged in trade with Britain's enemies. This frustration was added to the prohibitions on trade with Europe, the stopping and searching of American merchantmen by British cruisers, the actual skirmishes and the question of impressment, in contributing to the American declaration of war in July, 1812.\(^5\) This last stage of the Napoleonic War in the Caribbean revived the declining Prize Courts by providing a final spurt of business; but, being characterised by several novel features in the area of operations and type of warfare, it also demonstrated conclusively how responsive the Courts had become both to policy and to the exigencies of war.

The earlier phases of the Napoleonic War had seen the gradual decline of the Caribbean privateer, and British policy at the beginning of the American War was to rely solely on the Royal Navy to bring the United States to task, by blockading the American coast. Neither letters of marque for privateers nor even Commissions for Prize Courts were sent out to the West Indies immediately. The British naval commander in America, Sir John Warren, however, was soon forced to report that even with almost a hundred warships he found it impossible to repress American trade. Vast swarms of privateers had been commissioned by the United States Government, the audacity of which made the convoying of the

\(^5\) For the causes of the War, see, for example, Mahan, 1812, 141-282. Ironically, the most objectionable Orders-in-Council had been revoked on June 23, 1812, too late to affect the American decision.
British West Indian trade an even more pressing duty than the blockade of the American coast. Besides this, American warships, particularly frigates, were proving much more formidable than anticipated, making it extremely difficult for Royal Navy vessels to cruise singly, either to eradicate privateers or to seize American merchantmen. In the first three months of the War, only about 70 American vessels had been seized, 38 by the ships on the Halifax station and 24 by those based at Jamaica. This was in strict contrast to the wholesale sweep of enemy prizes which had characterised the beginning of earlier wars.

The Admiralty prescribed the most obvious solution to the menace of the American privateers by commissioning privateers themselves more freely than ever before. Letters of marque and Prize Court Commissions against the Americans were accordingly sent out to Barbados, the Leewards, Tortola, Jamaica, the Bahamas and Bermuda in October, 1812, and Governors were instructed to encourage privateers to the utmost. The result was a heyday for the privateers in western waters, with as many as 200 in commission by the end of 1813. The most vulnerable American shipping lanes were those from the Mississippi to the Eastern Seaboard and to and from Europe, and consequently the Bahamas and Bermuda, along with Halifax, became the chief privateering bases, and their Prize Courts were the most

57 Warren to J.W. Croker, December 28-9, 1812, quoted by Mahan, 1812, 402.

58 Ibid.

59 Sent to Malta, Halifax, Newfoundland, Cape of Good Hope, Ceylon, Calcutta, Bombay, Madras and New South Wales as well as the six Caribbean Prize Courts; October 13, 1812, Adm. 2/1076, 494-500.

60 Antigua, 36, Barbados, 8, Halifax, 31, Bahamas, 31, Jamaica, 1, Tortola, 25?, Bermuda, 75?, Adm. 1/3902.
BUSINESS OF BRITISH PRIZE COURTS IN THE CARIBBEAN DURING THE AMERICAN WAR, 1812-1814
active throughout the American War. The few American vessels that ventured into the Eastern Caribbean generally entered by the Anegada Passage, and those taken were generally carried into Tortola. Jamaica, while it remained the most important naval station in the Caribbean itself, appears only to have commissioned one privateer against the Americans, and declined dramatically as a place for the adjudication of enemy prizes. The decline of Antigua and Barbados was even more absolute.

In complete contrast to the period immediately after the beginning of war in 1803, when Bermuda was denied the chance of being a privateer base at all, the island became in 1813 and 1814, the most successful privateering base of all time, her Prize Court adjudicating no less than 256 prizes during the American War. The Bahamas, almost as negligible as Bermuda in the period after 1803, was only a short distance behind Bermuda, with 236 adjudications in little over two years.\(^6^1\)

Thanks to the aid provided by the Bermudian, Bahamian and Nova Scotian privateers, the Royal Navy blockade of the American coastline became so effective that many parts of the Eastern Seaboard were cut off from each other. American trade was crippled, and but for the limited trade in provisions allowed under British licence, some of the States might have been faced by actual famine. Maritime warfare was only prolonged by the intrepid American frigates and privateers, though these were forced to patrol far from the American coast, and to burn their prizes rather than carry them back to their own ports for adjudication. When the ending of general war in Europe in May, 1814 brought the whole weight of the Royal

\(^{61}\)H.C.A. 49/99.
Navy to bear down on the Americans, however, they were soon forced to sue for peace. The Treaty of Ghent, eventually signed by the commissioners on December 24, 1814, was rapidly ratified by Congress, on February 17, 1815.\(^{62}\)

The Napoleonic coda of The Hundred Days appears not to have produced more than a handful of seizures in the West Indies.\(^{63}\) With the ending of the American War and the adjudication of prizes already held, the business of the Caribbean Prize Courts came practically to a halt. War had brought such prosperity to Bermuda and the Bahamas that peace was regarded as a positive setback in those islands; and although the American War had not brought comparable benefits to the Prize Courts of the Caribbean proper, peace now threatened them with the obscurity suffered by the non-prize Courts since 1801. It is perhaps significant that the first two Judges to apply for release from their wartime duties were those of Barbados and Tortola, two of the least successful Prize Courts during the recent period; though as early as March, 1815, Judge Territ of prosperous Bermuda had also applied for and been granted a rest from his wartime labours.\(^{64}\)

The reform of the West Indian Prize Court system, despite its limitations, had gone a long way to remedy the deficiencies apparent in earlier wars. Throughout the Napoleonic War, the Courts were


\(^{63}\)The Prize Commissions and letters of marque revoked at the end of 1814, were hurriedly revived against France in June, 1815; Adm. 2/1078, 546, 567.

\(^{64}\)Adm. 2/1078, 409, 561, 309, 578. See above, III, 102-8.
sufficiently flexible to serve naval and privateering bases as needs dictated, sufficiently responsive to imperial policy that they condemned or released vessels according to High Court of Admiralty decisions or Orders-in-Council, and sufficiently efficient and just that cases were speedy and appeals procedures so well organised that neutrals rarely had grounds to make embarrassing complaints. Yet system and reform were restricted to six Vice Admiralty Courts, ignoring almost totally the equal number of Courts which were not granted prize jurisdiction between 1801 and 1804. The consolidation of the Prize Courts almost insured that the unfavoured Courts would quietly fade for lack of business; yet this ignored the need for courts with Instance jurisdiction, particularly jurisdiction over the laws of trade, in practically every British colony.

When it came to Prize and Instance jurisdiction there was, as always, a conflict of interest. The Prize Courts were sustained by Government support and by the popularity of the service they performed: the Revenue Courts were only fitfully supported by the Customs officers and the Board of Trade, and those in the long-established colonies were unpopular with the local inhabitants. Consequently, although the Vice Admiralty Courts with prize jurisdiction carried on a considerable business in Instance and Revenue cases as a sideline, the other Courts in being in 1801 appear to have faded away almost completely for lack of business of any sort. The same conditions did not apply to the enemy colonies steadily acquired by Britain throughout the War. In these new colonies, there was a special need for courts to enforce the imposition of the British brand of Mercantilism. Besides being subject to different rules, the trade of these colonies was in different hands, and the British
merchants—who opposed all restrictions on trade in the older British colonies—were inclined to favour courts which would uphold their newly-won privileges. These factors explain the enthusiasm with which new Instance Courts were promoted in the new British colonies. 65

Even the optimistic new Instance Courts, however, were doomed to obscurity from the beginning. They were treated unsympathetically by Sir William Scott, who, predictably, had little enthusiasm for courts over which the High Court of Admiralty could expect little control, in which the Judges were not salaried, and which would not do sufficient business to attract qualified personnel. 66 The Courts were useful for a period in guiding trade into British channels and excluding foreign smugglers, and they helped to promote friction with the Americans, who saw them as unjustified restraints on their burgeoning West Indian trade. But as each of the new colonies either became firmly British or was returned to its former owners by the Congress of Vienna, these conditions passed, and any restrictions on trade became as unpopular in the new British colonies as they had always been in the old. 67 Besides

65 See above, 248, and V, 159-162.

66 See particularly the correspondence over the Courts in the Guianas, requested by the officers of the Customs in Surinam and Demerara; Sir William Scott to the Lords Commissioner, January 10, 1807, Adm. 1/3898; ditto, February 5, 1809 and July 17, 1810, Adm. 1/3899. Scott was especially incensed because Governor Bentinck had erected a Court without reference to the High Court of Admiralty or even the Lords Commissioner of the Admiralty.

67 See, for example, the fate of the Demerara Court described by Judge Baggs to John Barrow, November 25, 1817, Adm. 1/3904.
this, as time went on, British Mercantilism became less rigorous and the Instance Courts, even where they had zealous staff, or any staff at all, had progressively less work to do.

Only the prospect of a renewal of war could hold out hopes of a revival of Vice Admiralty Court prosperity, and with the growth of the free trade ethos, this became a remoter possibility year by year. Judge William Territ of Bermuda, when resigning his office at the expiration of his one year's leave in 1816, reported despairingly that "the Business of the Instance Court being in general very trifling the Profits arising from fees will not, I think, exceed £15, or £20, per Annum, should they even amount to so much", 68 and by the time that Charles Clark made his Summary of Colonial Law in 1834, he had to report that although practically every British Caribbean colony had a nominal Vice Admiralty Court, the functions of these Courts were barely discernible. 69

68 Territ to Barrow, March 10, 1816, Adm. 1/3904.

69 Charles Clark, A Summary of Colonial Law, the Practice of the Court of Appeals from the Plantations and of the Laws and their Administration in All the Colonies with Charters of Justice, Orders in Council, etc., London, Sweet and Maxwell, 1834.
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Business of Caribbean Prize Courts
1793-1815
From H.C.A. 49/99 and J.V.A. Minute Books
Conclusions

The purpose of this study has been to examine the part played by the Caribbean Vice Admiralty Courts in the British imperial system, and to show ways in which the Courts changed between 1763 and 1815. It should now be possible to determine in what senses the Courts were agents of a formal system, and to what degree they were indispensable to the efficient operation of that system, before making, at the close, some rather bolder conclusions about ways in which the Vice Admiralty Courts can help illuminate certain broader imperial issues.

Vice Admiralty Courts were practically coeval with British West Indian colonisation. Wherever colonies were established, Vice Admiralty Courts almost invariably followed, to fulfil the necessary functions of trying pirates, adjudicating prizes and settling ordinary maritime disputes. While deriving their authority from the Governors' Admiralty Commissions, they appeared to arise spontaneously to satisfy local needs, being shaped more by local conditions than by a servile imitation of metropolitan forms. Yet, as haphazard colonies burgeoned into a formal empire, Vice Admiralty Courts were increasingly employed as tribunals for the trial of infringements of the the Acts of Trade that bound the empire together; and, during the wars that were an almost inevitable consequence of mercantilist exclusivism, the Courts, by the adjudication of prizes, acted as agents of imperial naval policy.

The process of imperial formalisation that characterised the period between the Restoration and the end of the Seven Year War required an increased degree of precision and uniformity in the colonial
Vice Admiralty Courts, and a greater measure of metropolitan control.

By 1763, the various functions of the colonial Vice Admiralty Courts had been made distinct, at least in theory, and the paradox that the Courts were national tribunals enforcing national statutes as well as the Law of Nations had thereby, to a certain extent, been resolved. The power to try pirates and other high seas felons had been transferred to separate, and separately commissioned, Courts of Admiralty Sessions, and the adjudication of prizes had been delegated to special Prize Courts, commissioned only after the outbreak of war. The trial of infringements of the Acts of Trade and Revenue remained nominally a branch of Instance jurisdiction, but always tended to be regarded as separate from the settlement of ordinary maritime disputes.

Besides the division of jurisdiction, certain other principles of uniformity had been established by 1763. The Courts were uniformly authorised; by standing commissions for the trial of pirates, by special commissions for Prize Courts on the outbreak of war, and by fresh commissions for Instance Courts upon the appointment of each new Governor. Personnel and procedures were understood to be modelled on those of the High Court of Admiralty, the printed forms and precedents of which were increasingly used; and not only were the personnel similar from Court to Court, but the control of patronage gradually passed from colonial Governors to the metropolitan authorities, particularly the Lords Commissioner of the Admiralty. Metropolitan control was further augmented by the gradual evolution of a system of appeals from Vice
Admiralty Court decisions; to the Privy Council, the High Court of Admiralty and, in wartime, to the Court of Prize Appeals.

As far as personnel and procedures were concerned, it was not necessary for the Vice Admiralty Court system to change much from 1763 to 1815. Yet certain inadequacies became increasingly apparent, particularly in the operation of the Courts as agents of the British Mercantile System, not all of which were remedied before the end of the Napoleonic Wars ushered in the decline of mercantilism itself. The basic deficiency was that Vice Admiralty Court personnel were not salaried, and relied upon fees for their emolument. In normal times, business was insufficient to provide adequate rewards, and the result was that Judges and other personnel were usually either inactive or extortionate; and since colonial posts were rarely lucrative enough to attract highly qualified personnel from the metropolis, the Courts were customarily staffed with local men not only unqualified but also strongly under the influence of local interests. The chances, therefore, of strongly enforcing an Imperial Mercantile System were doubly reduced, since colonial Judges had neither the competence nor the incentives to support metropolitan authority against local interests. These deficiencies were compounded by the delays in the transmission of commissions, orders and fresh precedents and the resulting obscurities inevitable in an age of sailing ships, endemic warfare and an overworked metropolitan bureaucracy.

Only in their functions as Prize Courts did the Caribbean Vice Admiralty Courts flourish, and thus it was as agents of imperial naval
policy that they were most effective. The Seven Years' War (1756-63) and the American and Maritime War (1775-83) saw an enormous increase in British naval and privateering activity in the Caribbean, and the Vice Admiralty Courts prospered in adjudicating the influx of seizures. Not only did the income of the Judges and the other officers multiply through the increase in fees, but the Courts assumed great local popularity in promptly condemning seizures made by local privateers and in helping to reduce the threat of enemy warships. As a result of the wartime flurry of activity, the Courts were also relatively active in Instance jurisdiction, including the application of the Laws of Trade to the extent that they continued to be applied during wartime. But wars were shortlived, and there was not time for the temporary prosperity of the Vice Admiralty Courts to result in the raising of the standards of their personnel. Besides this, the number of Prize Courts tended to outrun their need, so that the inevitable cutback on the coming of peace was unduly magnified. Attempts on the part of the Courts to compensate for the loss of Prize business by undue zeal in the prosecution of Instance cases, rapidly dissipated in peacetime the stock of popularity garnered during the preceding war.

The failure of the Caribbean Vice Admiralty Courts to enforce the mercantilist side of British imperial policy was not a serious fault before the American War of Independence, when the whole system of British mercantilism revolved around the sugar plantation colonies, and smuggling was not such a serious temptation in the West Indies as it was in North
America. But with the independence of the United States, the situation rapidly altered. Not only were the Americans—whose reciprocal trade was essential to the British West Indies—now aliens, but there was a conscious effort on the part of the British Government to control more strictly those fragments of the British Empire that were left. The period between 1783 and 1793, therefore, saw an attempt by the imperial authorities to apply the Laws of Trade in the Caribbean with greater efficiency than ever before, through the Royal Navy, the Customs service and the Vice Admiralty Courts. Success was limited, however, not only because the Vice Admiralty Courts were little stronger than before, the reform of the Customs service was less than complete, and very few naval officers were prepared to enforce the Laws of Trade, but because the local planters and merchants, through the colonial legislatures, redoubled their opposition to laws from which they derived no obvious benefit. The most outspoken of the memorials of complaint, that by the Assembly of Jamaica in 1789, echoed the very arguments used by the Americans against the Navy, the Customs service and the Vice Admiralty Courts before the outbreak of the War of Independence.

Neither the imperial system of mercantilism nor the colonial opposition to it had been fully realised before the last and longest of the wars against the French began in 1793. With the renewed spate of seizures, Prize Courts revived like flowers in the desert after rain, and the conditions of prosperity continued for a generation. As Prize Courts, the Caribbean Vice Admiralty Courts reached a peak of perspicuity in unravelling the complex subterfuges employed by enemies and neutrals
in running the British blockade, and were admirably speedy in their operations. But the experience of previous wars, in which appeals had been extremely rare—and perhaps natural cupidity as well—had led the Courts to regard themselves simply as machinery for the condemnation of vessels brought before them, and they quickly proved themselves inadequate as agents of a more flexible imperial policy.

In previous wars, condemnations by Vice Admiralty Courts had occasionally provoked diplomatic crises and had even contributed to the belligerency of neutrals and the formation of the Armed Neutrality of 1780; but these condemnations had generally resulted from changes in British policy reflected in Instructions to Royal Navy vessels and privateers and were the result of deliberate and inflexible policy decisions. The new status of the United States as not only a neutral alien but also the most active carrier of belligerent cargoes changed this situation drastically. The almost automatic condemnation by the Caribbean Vice Admiralty Courts of some 300 American vessels seized as the result of one Order-in-Council in 1793 despite its reversal early in 1794, provided an extremely serious diplomatic embarrassment for the British Government and pointed up the need for the reform of the Courts. The Prize Commission set up by Jay's Treaty and the subsequent improvements in appeals procedure loosened the diplomatic tension without, however, reforming the Courts, and it was only the emphatic renewal of American complaints and the appointment of Sir William Scott as Judge of the High Court of Admiralty in 1798 that led to practical reform.
The reforms passed under the auspices of Lord Grenville at the urging of Sir William Scott, were wide-sweeping but incomplete. The number of Prize Courts was drastically reduced and most of their Judges were salaried and pensioned. Highly qualified Judges were chosen to fill vacancies and sent out with almost absolute power over their subordinates, and with orders to emulate the practice of the High Court of Admiralty more closely than ever before. Absenteeism and sinecurism were reduced, and patronage passed practically from the Lords Commissioner of the Admiralty to the Judge of the High Court of Admiralty, who not only kept a tight rein on the Vice Admiralty Judges but also retained strong links with the chief policy-makers in the imperial government.

In the period of the French Wars after the truce of Amiens, the Caribbean Prize Courts were almost completely responsive to the fluctuations of British policy. Deviations from the model of the High Court of Admiralty became rarer, and West Indian Judges responded more readily to changes in Instructions from the Admiralty, Treasury and Board of Customs, and to modifications in the Law as developed in the cases tried before the High Court of Admiralty and the Courts of Appeal. Justified complaints against decisions made in the Vice Admiralty Courts, moreover, received inexorable, if delayed, redress in the Courts of Appeal, although most of the criticism of the actions of the Vice Admiralty Courts was concentrated on the system of which the Courts were now an integrated part, not on the peripheral Courts themselves.
As had happened in previous wars, the volume of non-Prize business tended to increase during the last French Wars as a natural function of the increased activity and prosperity of the Vice Admiralty Courts. Besides this, the takeover of French, Dutch and Spanish colonies which followed the achievement of absolute British naval hegemony in 1805 resulted in the establishment of many new Instance Courts, which might have been expected to have helped to enforce the British imperial code. Yet these new Instance Courts, like those Vice Admiralty Courts which had been denied Prize jurisdiction in the reforms of 1801-5, suffered from many of the old deficiencies. Only the Prize Courts had salaried Judges, and the officials of the Instance Courts continued to rely on fees. After the first surge of business, the new Courts tended to decline, and even those which managed to attract optimistic personnel with adequate qualifications faded into desuetude, encouraged in their decline by the traditional opposition of local merchants and planters to any form of regulation unprofitable to themselves. Even the Prize Courts aroused opposition, for though most of their Judges were salaried, those who had been appointed before the reforms were not. Nor were salaries paid to subordinate officials, who, though more firmly than ever under the control of their Judges, were allowed in practice an extremely free hand in the levying of fees. Despite increasing complaints from the officers of the Royal Navy, Vice Admiralty Court fees were not uniformly regulated before the end of the Wars in 1815.

The effectiveness of the Caribbean Vice Admiralty Courts as agents of the British imperial system, however, was determined not so
much by intrinsic deficiencies in their operation—which, indeed, had been largely eradicated—as to changes which occurred in the system itself. Once British naval hegemony had been established and enemy colonies had fallen into British possession, the flow of prize vessels dried up to a trickle that was only replenished as neutral powers were successively goaded into war. After 1809, even the Prize Courts were threatened with extinction for lack of business, a danger that was fortuitously averted only by the American declaration of war in 1812. Besides, the establishment of almost complete control by Great Britain over the islands of the Caribbean was not accompanied by the increase in Instance business which the Vice Admiralty Courts might have expected, but by a gradual loosening of the British mercantilist bonds, particularly in relation to trade with the Spanish American colonies. Mercantilism had always been flexible where relaxations could be shown to be advantageous to the metropolis, and now that Britain was commercially dominant and had rich possessions in the East as well as the West Indies, "free trade" was much more attractive than a system of exclusivism based almost solely on the protection of West Indian sugar. During the latter years of the Napoleonic Wars, the system of free trade with the Spanish colonies which had begun even before the establishment of the first free ports in 1766, was greatly extended, both by the creation of new free ports and by the huge extension of the system of licences. With the independence of the richest of the old French colonies, Hispaniola, which enjoyed special trading concessions with Great Britain by the
Maitland Convention of 1798, and the additional opening of ports by colonial Governors to relieve wartime shortages, the system of Caribbean free trade was not only almost complete in itself, but the operations of the Instance Courts were so complicated that prosecutions under the Acts of Trade were made difficult almost to the point of impossibility.

Prize business, after the last spurt of 1812-14, came to an abrupt end in 1815. Thereafter, mercantilist business also declined so completely that within twenty years the Vice Admiralty Courts had reverted to a status less significant than at any time since their foundation. Practically speaking, they remained simply occasional tribunals for the settlement of ordinary maritime disputes. Mercantilist business had faded away; piracy had likewise almost disappeared, and the Courts of Admiralty Sessions met even less frequently than the Instance Courts. The Vice Admiralty Courts remained potential Prize Courts, but during the Era of Free Trade, war seemed an extremely remote prospect; and indeed it did not even touch the hems of the Caribbean for 99 years after the Treaty of Vienna. Yet the fading away of the Caribbean Vice Admiralty Courts after 1815, and even their failings during their years of activity, should not disguise the fact that they arose and developed largely in response to imperial needs, both naval and mercantilist. Their efficient operation was, without doubt, indispensable to the complete realisation of the British imperial system. The fact that, for a
multitude of reasons, they only achieved a large measure of success in supporting naval policy, and generally failed in supporting the British Mercantile System, does not deny their indispensability. Their successes, while limited, were real enough, and their failure was no greater than that of the Empire itself.

If, then, the Caribbean Vice Admiralty Courts were an important component of the British imperial machine, and consequently shared in the fluctuating fortunes of the Empire as a whole, is it not possible, finally, to discover in the limited compass of the history of the Courts some tentative solutions to the wider problems which exercise British imperial historians? What, for example, was the essence of the change that occurred in the nature of the British Empire between 1763 and 1815, and what separated the "Old" from the "New" Empire? How, above all, can we resolve the apparent paradox that increased formalisation and professionalism was accompanied by the physical truncation of the Empire by the secession of the Thirteen Colonies?

Our purpose should be threefold: to decide whether, and in which ways, British colonies reflected the mother country; to show ways in which ideas and their application changed with changes in the mother country; and to show how, in their microcosmic way, the Vice Admiralty Courts of the Caribbean provide evidence of these changes in practice.

Throughout the historiography of imperialism there have been two main theories of Empire struggling for dominance. One sees an empire as simply an accretion of colonies that constitutes an extension of the mother country and its population, however haphazardly the
colonies were acquired or however varied were the drives of the original colonists. The other sees an empire as consisting, properly, only of components complementary to, and generally dependent upon, the mother country. In the legal sphere, the difference is detectable in two attitudes: that which regards the Law as something which a colonist carries with him as his birthright, absolute and immutable; and that which sees the Law as a flexible instrument, adaptable to the special conditions and needs of the colonial context. As far as the Vice Admiralty Courts were concerned, there was a difference between those who saw them simply as convenient tribunals for the settlement of maritime disputes, and those who saw their potential as instruments of imperial organisation and control.

Of the two interpretations, the first tends to be that which is held by proud colonists; the second, that which is maintained by studious imperialists. Even in the seventeenth century, the imperial theorists were inclined to emphasise the benefits of the colonies to the mother country rather than to glorify the achievements of the pioneer colonists; but it was an eighteenth century discovery that colonies could be justified solely on the grounds that they provided raw materials, markets and employment for artisans and seamen, not to mention gold for metropolitan merchants and glory for imperial statesmen.

This point of view had two bases: the commercial expansion that made Britain the most dominant maritime power in the world; and
the social and economic change that provided a powerful voice for commerce in the imperial parliament, achieved by a subtle change both in parliamentary personnel and in the economic interests of the traditional parliamentary class. Together, these factors explain the evolution of the British Mercantile System and the decided preference for plantation colonies which it involved. They also explain how it came about that the Vice Admiralty Courts were transformed, at the end of the seventeenth century, into indispensable instruments for the application of the British Mercantile System.

In the unabashed preference of imperial statesmen for plantation colonies and their disinterest in colonies that were so similar to the mother country and so sophisticated that they were potential rivals, conflict with the Thirteen Colonies was already latent by the beginning of the eighteenth century. But it was the great acceleration in all imperial processes that occurred after 1760 that made secession almost inevitable. Around the middle of the eighteenth century, and manifested, for example, in the careers of George Grenville and Lord Shelburne, disciples of the elder Pitt, there began an increased rationalisation of the whole system of government. Starting with a reorganisation of the departments of state and of their relationships with King and Parliament, it spilled over into the reorganisation of the organs of imperial control. These changes, aimed at augmenting an imperial system already dedicated almost entirely to the exploitation of the sugar colonies, were seen by the Thirteen Colonies as being not only irrelevant but baneful.
The rationalisation and reform of the Vice Admiralty Courts in the 1760's was much less complete than that, for example, of the Customs service, both because the Courts were subordinate to the High Court of Admiralty and therefore could not be reformed directly, and also because they claimed to administer an international law that was not easily susceptible to national fiat. Yet changes were made, in the shift of patronage, in the homogenisation of the Courts and in the creation of consolidated Courts for North America, that helped to add to the grievances of the Thirteen Colonies.

The underlying causes of the increased imperial rationalisation that occurred after the accession of George III or the signing of the Treaty of Paris are by no means clear; but it is significant that at the same time Britain was imperceptibly undergoing economic as well as political changes. Largely through the release of new capital—which may or may not have originated, as Eric Williams maintains, from the sugar industry and the international slave trade—industrialisation accelerated, producing in its turn a more aggressive commercialism. These mutations were undoubtedly reflected in the preference for "trade not dominion" shewn in the writings of Lord Shelburne and his circle, and in the increased interest in the rich markets and new raw materials of Latin America and the East, which was reflected in the creation of free ports in the Caribbean and the attacks on the monopoly of the East India Company. This embryonic "free trade" movement, first emphasised in modern historiography by Vincent T. Harlow, was not accompanied by the pacifism that characterised its derivative
during the middle decades of the nineteenth century. Indeed, there appears to have been a decided readiness to accept commercial war as a natural concomitant of widened commerce, and in this—as in the enforcement of the old mercantilism—the Vice Admiralty Courts played an indispensable part.

Changes in imperial theory and practice usually attributed to the years after 1783 can nearly all be traced to the years before 1775, and in this light the American War of Independence appears far less traumatic than is often depicted. Although secession was probably inevitable, it was by no means disastrous to a rational empire, for economic dependence, as Lord Sheffield predicted, continued long after the achievement of political independence. In some ways, indeed, the achievement of independence by Hispaniola and Hispanic America were more important to the development of the British Empire, for it was the former which showed up the emptiness of the old protective system and the latter which provided huge new markets for British industry, while at the same time the East was demonstrating the value of new products, or old ones produced in a "free" economy.

The result of these discoveries was the obsolescence of the old Mercantile System, and with its decay, the Caribbean lost its focal importance in the British imperial scheme. Similarly, the Vice Admiralty Courts declined greatly in usefulness, though they did enjoy a final surge of activity during the last French wars and were, somewhat incompletely, reformed under the influence of Sir William Scott.
There is considerable irony in the fact that the Vice Admiralty Courts only achieved a large measure of reform, rationalisation and responsiveness to imperial control after the need for them had really passed. They had, in fact, come full circle after barely touching at their goal. Originating in the seventeenth century in response to needs to settle the ordinary maritime problems and disputes occurring from time to time in young colonies, they were again, by the middle of the nineteenth century, little more than shadowy relics, exercising the same occasional jurisdiction. A student of the Courts in 1868 would have seen little to remind him of the tremendous blaze of imperial activity that had characterised the "First" British Empire, and in which the Courts had played such an indispensable role. The evidence was already mouldering in the archives.

Just as many American historians find it difficult to consider that an Empire could survive the secession of the Thirteen Colonies, so most British imperial historians have hitherto thought that the ending of the Old Colonial System meant a halt to British imperialism, or at least the beginning of a Great Imperial Hiatus. Yet the dormancy of the Vice Admiralty Courts, as well as the tragic decline of the sugar plantation colonies, should not help us to compound the error of thinking that imperialism had died with the onset of the Free Trade Era. We would maintain that the history of the British Empire from its beginnings shows us that the drive towards commercial empire was
always at least as strong as the desire for formal colonies, and believe, with D.K. Fieldhouse, R. Robinson and J. Gallagher, that the mid-nineteenth century is just as valid a period for imperial studies as those more familiar periods which preceded and followed it.

The history of the British Empire is a coat of many colours, but a seamless garment nonetheless. The failure of Vice Admiralty materials as an historical resource after 1815 should not mislead or deter us. We should look elsewhere to pick up the imperial threads, perhaps to the correspondence of British consuls, which multiplies hugely during the Free Trade Era.
LIBEL IN PRIZE (JAMAICA, 1779)

The Advocate General at the Relation of James Taswell, Commander of the private Schooner of War called the Tartar / having Letters of Marque on board / his Owners Officers and Mariners against

The Snow or Vessell called the Carcase whereof Isaac Kerr late was Master or Commander.

Be it Remembered that on the fourteenth day of April in the present Year of our Lord one thousand seven hundred and seventy nine came Thomas Harrison Esquire his Majestys Advocate of our Island of Jamaica who as well for and behalf of our Sovereign Lord the King as of the said James Taswell Master and Commander of the said private Schooner of War called the Tartar his Owners Officers and Mariners in this behalf prosecutes against a certain Snow or Vessell called the Carcase whereof Isaac Kerr late was or pretended to be Master her Guns Tackle Furniture Ammunition and Apparel and the Goods Wares Merchandizes and Effects on board of the said Snow or Vessell and which said Snow or Vessell was taken and seized as good and lawful Prize upon the High Seas and within the Jurisdiction of the Court by the said James Taswell his Officers and Mariners in the said private Schooner of War called the Tartar on which day the said Thomas Harrison Advocate General as aforesaid on the behalf aforesaid Doth Article Allledge Aver propound and say that the said Snow or Vessell called the Carcase with her Guns Tackle Furniture Ammunition and Apparel and the Goods Wares Merchandizes and Effects on board the said Snow or Vessell after the first day of January in the Year of our Lord one thousand seven hundred and seventy six to wit on the sixth day of April in the present Year of our Lord one thousand seven hundred and seventy nine were the property of and belonging to some or one of the Inhabitants of the Colonies of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania the three Lower Counties on Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia some or one of these And that the said Snow or Vessell called the Carcase her Guns Tackle Furniture Ammunition and Apparel Goods Wares Merchandizes and Effects on board the said Snow or Vessell so being the property of some or one of the Inhabitants of the said Colonies on or about the said sixth day of April in the said Year of our Lord one thousand seven hundred and seventy nine was taken and seized upon the High Seas aforesaid and within the Jurisdiction of this Court by the said James Taswell his Officers and Mariners by Virtue of the Statutes in that Case made and provided which said Statutes the said Thomas Harrison Advocate General aforesaid Doth Aver and in Truth and fact say are publick notorious and well known to all his Majestys Subjects Friends and Allies and the said Thomas Harrison as Advocate General aforesaid on the behalf aforesaid Doth further Article Allledge Aver propound and say that the said Snow
or Vessell called the Carcase under the Command of the said Isaac Kerr
her Guns Tackle Furniture Ammunition and Apparel Goods Wares Merchandizes
and Effects on board the said Snow or Vessell on or about the said sixth
day of April aforesaid was taken and seized as good and lawful Prize
upon the High Seas aforesaid and within the Jurisdiction of this Court
as she was found coming from trading in some Port or Place of the s:\
Colonies by the Said James Taswell his Officers Mariners by Virtue of the
Statutes in such Case made and provided which said ...Thomas Harrison
Advocate General aforesaid Doth Aver and in truth and fact say are publick
notorious known to all his Majesty's Subjects Friends and Allies and therefore
the Effect purport and true intent and meaning thereof ought not to be
Infringed by them or any of them Whereupon and upon all and singular the pre-
mises the said Thomas Harrison Advocate General aforesaid humbly prays that
the said Snow or Vessell called the Carcase together with her Guns Tackle
Furniture Ammunition and Apparel Goods Wares Merchandizes and Effects on
board the said Snow or Vessell may be confiscated and condemned to our Sovereign
Lord the King for the Use of the Captors and Owners and that the same may be
sold And the price and prices or monies arising from such Sale may be
distributed and divided among the said James Taswell his Owners Officers
and Mariners according to their Articles and pursuant to the Statutes in
such Case made and provided and his Majesty's most gracious Declaration
and Proclamation in that behalf made and that this Libel may be received.

(Signed) Tho. Harrison

Cockburn MacKey Proctors for the Relators
MONITION IN PRIZE (JAMAICA, 1779)

JAMAICA, ff. George the Third by the Grace of God, of Great Britain, France and Ireland King, and of Jamaica Lord, Defender of the Faith, &c. To Hugh Polson Esq; Marshal of our Court of Vice-Admiralty, of our said island of Jamaica, or to any of his lawful Deputies Greeting: Whereas our trusty and well-beloved the Honorable John Brownrigg Esq Judge Surrogate and Commissary of our said Court Doth order and decree to call and cite before him, on a certain day and time, and after the form and manner herein after prescribed, all manner of persons whatsoever (except such person or persons who by an act passed in the sixteenth year of our reign, for prohibiting all trade and intercourse with the Colonies of New Hampshire, Massachusetts-Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the three lower counties on Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, during the continuance of the present rebellion within the said colonies respectively, are excepted and precluded; and also, except the subjects and vessels of the French King, or others inhabiting within his countries, territories, or dominions) That have or pretend to have any just claim, right, title or interest, of, in, or to a certain Snow or vessel called the Carcase whereof one Isaac Kerr late was or pretended to be master, her cargo, apparel and furniture, taken and seized by James Taswell Commander of a certain Schooner or Vessel called the Tartar having a Commission or Letter of Marque his officers, seamen, marines-end-soldiers, which said Snow or vessel, is now riding at anchor in the harbour of Kingston in the island aforesaid, and within the jurisdiction of this court.

WE THEREFORE will, require and strictly command You, or any of Ye, That by affixing of this Monition at some public place at our Town of St. Iago de la Vega at the time of public concourse of merchants, You warn and monite all and every persons whatsoever (except such person or persons who are expected and precluded as aforesaid) that have or pretend to live any just claim, right, title or interest of, in, or to a certain Snow or vessel called the Carcase whereof one Isaac Kerr late was or pretended to be master, her cargo, apparel and furniture, taken and seized as aforesaid, That they be and appear before our said Judge within our Town of Kingston on Monday next being the Nineteenth day of April instant between the hours of Eight and Twelve in the forenoon of the same day, then and there to shew some just, reasonable and lawful cause (if any they can) why the said Snow or vessel, her cargo, apparel and furniture, taken and seized as aforesaid, should not be forfeited and confiscated to use of the said James Taswell his owners officers seamen, marines-end-soldiers, for and by reason that the said Snow or vessel, her cargo, apparel and furniture did at the time of the capture and seizure aforesaid, belong to and were the property of some or one of the inhabitants of the said colonies of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the three lower counties on Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia,
Some or one of them, or for or by reason that the said Snow or vessel, with her cargo, apparel and furniture, was found trading in some port or place or the said colonies, or going to trade or coming from trading in such port or place, with all and every of which said colonies all manner of trade and commerce then was and still is prohibited, in and by the said act.

AND We further require and command You, that you intimate, or cause to be intimated, as We do intimate by these presents to all persons in general (except such persons who are expected and precluded as aforesaid) That if they do not appear at the time and place aforesaid, and when there, shew some just, reasonable and lawful cause to the contrary, the said Judge of our said Court, will proceed to pronounce the said James Taswell or vessel, her cargo, apparel and furniture, taken and seized as aforesaid, to be rightfully and lawfully seized, and to be a just and lawful prize to the use of the said James Taswell his owners officers seamen, marines and soldiers, as goods forfeited and confiscated to them for the reasons aforesaid. And if the persons hereby monited, do not appear at the time and place aforesaid, their absence will be deemed and accounted as contumacy. And what you have done in the premises you shall certify to us or to our said Judge of our said Court with these presents. Dated at Kingston in our said Court, and under the seal of the same, this fifteenth day of April in the year of Our Lord one thousand seven hundred and seventy nine and of our reign the Nineteenth

(Signed) Hinton East D RegCur V Admltis

J.V.A. 302/478
APPENDIX C

DEGREE IN PRIZE (JAMAICA, 1779)

At a Court of Vice Admiralty held at the town of Kingston on Tuesday the 15th day of June 1779 Before the Honorable John Brownrigg Esq; Judge Surrogate and Commissary of the said Court

The Advocate Genl ex rel Taswell & al vs The Snow Carcase

This Cause coming on to be heard this day, Mr. Advocate Genl opened Libel, and Mr. Browne Advocate for the Claimant opened the Claim, after which the preparatory examination taken in this Cause and the Affidavit of there not having been any papers writings or instruments either found on board or delivered up at or after the Capture of the said Snow together with the several depositions taken as well on the part and behalf of the relators as of the Claimant were severally read; Upon hearing whereof, and what was alledged by the Advocate for all parties, His Honor the Judge was pleased to order adjudge and decree as it is hereby ordered adjudged and decreed that the Cargo Goods Wares and Merchandize taken and seized as prize by James Taswell Commander of the Schooner called the Tartar (having a Commission or Letters of Marque) his Officers and Mariners in and on board the said Snow or vessell called the Carcase be and the same are hereby confiscated and condemned to our Sovereign Lord the King for the use of the said James Taswell his Owners Officers and Mariners, and that the same be sold, and the price and prices thereof be distributed and divided amongst the said Captors and Owners according to their Articles and pursuant to the Statute in such case made and provided; And his Honor the Judge was further pleased to order that the Agents for the relators in this Cause do by Saturday next return into the Office of the Register of this Honorable Court a full and perfect Account upon both in writing of the sales of the said Snow Carcase her Apparell and Furniture, which they were authorized to sell by an order made in this Cause on the first day of May last, and that the said relators agents do at the time of returning such account of sales pay into the hands of Hinton East the Deputy Register of this Court the Nett Proceeds of the monies arising from such sale; And his Honor the Judge was pleased to take time to consider of the application and distribution of such Nett Proceeds.

(signed) Hinton East D Reg Cur V Admltis Served Mr. Franks one of the Agents for Relators 19 June 1779. (signed) L. Coverly

J.V.A. 302/478
## APPENDIX D

**JAMAICAN APPEALS, 1776-1802**

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| 1784-92  | 59          | 6             | 6                            | 0                        | 0                            | 0                            | 0             | 10          |
| 1793-1802| 1629        | 271           | 154                          | 59                       | 52                           | 5                            | 1             | 17          |
| 1776-1802| 2605        | 291           | 166                          | 64                       | 55                           | 5                            | 1             | 11          |
APPENDIX E

FIAT FOR LETTERS OF MARQUE (BAHAMAS, 1801)

BA H A M A I S L A N D

GEORGE THE THIRD, by the Grace of GOD, of Great Britain, France and Ireland, KING, Defender of the Faith, and so forth:

To the Judge of Our Court of Vice-Admiralty of Our Bahama Islands, or his Deputy, now or for the time being: Greeting:

WHEREAS, divers injurious Proceedings have lately been had in France, in Derogation of the Honor of Our Crown, and of the just rights of Our Subjects: And Whereas, several unjust Seizures have been there made, of the Ships and Goods of Our Subjects, contrary to the Law of Nations, and to the Faith of Treaties; And Whereas, the said Acts of unprovoked Hostility have been followed by an open Declaration of War, against Us, and Our Ally, the Republic of the United Provinces: We Therefore, being determined to take such measures, as are necessary for vindicating the Honor of Our Crown, and procuring Reparation and Satisfaction, for Our injured Subjects, have by and with the Advice of Our Privy Council, ordered, That General Reprisals be granted against the Ships, Goods, and Subjects of France, so that as well Our Fleets and Ships, as also all other Ships and Vessels that shall be commissioned by Letters of Marque, or General Reprisals, or otherwise, shall and may lawfully seize, and take the Ships, Vessels and Goods, belonging to France, or to any Persons being Subjects of France, or inhabiting within any of the Territories of France, and bring the fame to Judgment in Our High Court of Admiralty, of England, or in any of Our Courts of Admiralty without Our Dominions, for Proceedings and Adjudication, and Condemnation to be there upon had, and given according to the Course of the Admiralty, and the Laws of Nations. And Whereas, by Our Commission under Our Great Seal of Great Britain, bearing date, the 14th day of February, One thousand seven hundred and ninety-three; We have willed, required, and authorized Our Commissioners for executing the Office of Lord High Admiral of Great Britain, or any Person or Persons by them empowered and appointed, to issue forth, and grant Letters of Marque and Reprisals accordingly, with such Powers and Clauses, to be therein inferred, and in such manner and form, as by Our said Commission more at large appeareth. And Whereas, three of Our Commissioners for executing the aforesaid Office of Lord High Admiral, by their Warrant under their Hands, and the Seal of the Office of Our Admiralty, have duly empowered, Our Captain General and Governor in Chief of our said Bahama Islands, or in his absence, Our Lieutenant Governor of Our said Islands, to cause to be issued forth, and granted pursuant to Our said Commission, by Warrant under his Hand, and the seal of Our said Islands, directed to the Judge of the Admiralty
of Our said Islands, at the request of any of Our Subjects, or others (being Owner or Owners of any Ship or Vessel) Letters of Marque and General Reprisals, to the effect aforesaid, to any Person or Persons whom such Owner or Owners, shall nominate to be Commander, and in Case of Death, successively Commanders of such Ship or Vessel; and to cause such Bail and Security to be taken, as is directed by Our Instructions, under Our Signet, and Sign Manual, bearing date, the fourteenth day of February, in the Year aforesaid, for the Commanders of Merchant Ships and Vessels, who shall have Letters of Marque and reprisals against France; and moreover, in issuing forth and granting (such Letters of Marque and General Reprisals, to cause all other Things to be had and done, conformable to and as Our said Commission and Instructions require: And Whereas, Tidderman Carr, Bromfield Bonamy, John Henry of the Island of New Providence, Merchant Owners of a certain Schooner or Vessel called Nancy hath made application in writing to William Dowdiswll Esq. Our Captain General and Governour in Chief or Our said Islands, and hath requested Our said Captain General and Governor in Chief, to cause Letters of Marque and General Reprisals to be issued for the Purpose aforesaid, unto Bromfield Bonamy and in Case of his Death, unto James Mitchell and in Case of his Death also, unto William Gibson whom the said Owners hath nominated successively, to be Commanders of the said Schooner or Vessel: We Therefore Will and Require you, the Judge of Our Court of Vice-Admiralty of Our Said Islands, or your Deputy, now, or for the Time being, forthwith to cause a Commission or Letter of Marque and Reprisals, to be issued out of Our said Court, and granted unto the said Bromfield Bonamy and in Case of his Death, unto the said James Mitchell and in Case of his Death also, unto the said William Gibson nominated successively Commanders as aforesaid, of the Schooner or Vessel, and to License and authorize the said Bromfield Bonamy and in Case of his Death, the said James Mitchell and in Case of his Death also, the said William Gibson to set forth in a Warlike manner, the said Schooner or Vessel, called Nancy of New Providence, of the Burthen of Forty Eight Tons, Foreign Built, having on Deck, Two Masts, a Square Stern, Square Tuck, no Gallery, and the Head, mounted with Six Carriage Guns, carrying Shot of Four pounds weight, and no Swivel Guns, navigated with Fourty-Five Men, (Officers included) and now bound on a Cruize; and therewith, by force of Arms, to apprehend, seize, and take the Ships, Vessels and Goods belonging to France, or to any Persons being Subjects of France, or inhabiting within any of the Territories of France, excepting only within the Harbours or Roads of Princes and States in Amity with us, and to bring the same of Judgment, in any of the Courts of Admiralty within Our Dominions, which being finally condemned, it shall and be lawful for the Commander of the said Schooner or Vessel to sell and dispose of such Ships, Vessels and Goods so finally adjudged and condemned, in such fort and manner as by the Courts of Admiralty has been accustomed: Provided Always, that before you issue such Letters of Marque, and Reprisals such Security be thereupon given as is directed by Our aforesaid Instructions, and hath been usual in such Cases: Provided Also, That in the said Letters of Marque and Reprisals so to be issued by you, as aforesaid, there be inserted a Proviso, that the Commander of the said Schooner or Vessel keep an Exact Journal of his proceedings, and therein particularly take Notice of all Prizes, that shall be taken by him, the Nature of such Prizes, the times and places of their being taken, and the Values of them as near as he can Judge, as also of the Station, Motion and Strength of the French, as well as he or his Mariners can discover, by the best intelligence he can get, and also of whatsoever else shall occur unto him, or any of his Officers
or Mariners, or be discovered or declared unto him or them, or found Out by Examination or Conference with any Mariners or Passengers of or in any of the Ships or Vessels taken, or by any other Person or Persons, or by any other ways or means whatsoever touching or concerning the Designs of the French, or any of their Fleets, Vessels or Parties, and of their Stations, Ports and Places, and of their intents therein, and of what Ships or Vessels of the French bound out or home, or to any other Place, as he or his Officers, or his Mariners shall hear of, and of what else Material in these Cases may arrive to his or their knowledge, of all which he shall from time to time as he shall or may have Opportunity, transmit an Account to Our said Commissioners for executing the Office of Our High Admiral aforesaid, or their Secretary, and keep a Correspondence with them by all Opportunities that shall present: And Further Provided, That in the said Letters of Marque and Reprisals so to be issued by you as aforesaid, shall also be inserted a Proviso, that nothing be done by the Commander of said Schooner or Vessel or any of his Officers, Mariners or Company contrary to the true Meaning of Our aforesaid Instructions, but that the said Instructions shall by them and each and every of them, as far as they or any of them are therein concerned in all particulars be well and truly Observed and Performed; and for your so doing, this shall by your Warrant, In Witness whereof, We have caused the Great Seal of Our said Islands to be Affixed to these Presents.

Witness,
APPENDIX F

FIAT AND COMMISSION FOR VICE ADMIRALTY COURT JUDGE (JAMAICA, 1804)

By His Honor George Nugent Esquire Lieutenant Governor and Commander in Chief of the Island of Jamaica, and the Territories depending thereon in America, Chancellor and Vice Admiral of the same &c. &c.

To Henry John Hinchliffe Esquire Greeting

Whereas John Holland Esquire Commissary and Judge of the Court of Vice Admiralty in this Island, has departed this Life. And Whereas there is no one at present lawfully Authorized to Execute the said Office.--Therefore to prevent any Inconvenience that may happen therefrom, Know You that I reposing great Trust and Confidence in your Knowledge, Learning, Experience and Fidelity, have by Virtue of the Power to me derived from His Most Excellent Majesty George the Third of the United Kingdom of Great Britain and Ireland King and of Jamaica Lord, Defender of the Faith &c, Made, Ordained Nominated, Constituted and Appointed you the said Henry John Hinchliffe His Majesty's Commissary and Judge of the Court of Vice Admiralty of the Island of Jamaica and the Territories there unto belonging, to take Cognizance of, proceed in, hear, Examine, and finally--Determine all Causes Civil and Maritime. And further to do, Execute and Perform all such Matters and Things Relating to, or Concerning the said Office of Commissary and Judge, According to the Civil and Maritime Laws and Customs of the High Court of Admiralty of England, and by all other lawfull Ways and Means According to your Skill and Knowledge, To have, hold, Execute, Exercise and Enjoy the said Office of Commissary and Judge of the said Court of Vice Admiralty during His Majesty's Pleasure, And to take and receive all and every the Wages, Fees, Profits, Advantages and Commodities whatsoever in any Manner due and belonging to the said Office According to the Custom of the said High Court of Admiralty of England, to your own proper Use and Behoof in as full and Ample Manner to all Intents and Purposes as the late John Holland or any other Person or Persons heretofore holding or exercising the said Office hath or have held or Enjoyed, or of Right ought to have, held or enjoyed the same. Hereby Giving and Granting to you the said Henry John Hinchliffe to Depute and Surrogate any Person or Persons to take the Examination of Witnesses and Administer Oaths and for all and every such purpose and Purposes as have been usual and Customary in the said Office.

Given under my Hand and Seal at Arms At Saint Jago de la Vega the 20th. Day of January in the Year of Our Lord 1804.

G. Nugent

By His Honor's Command

J. Tyrrell Secry
George the third by the Grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith To our beloved Henry John Hinchliffe Esquire greeting

We do by these Presents make ordain nominate and appoint you the said Henry John Hinchliffe to be our Commissary in our Vice Admiralty Court of our Island of Jamaica (in the Room of John Holland Esquire deceased) hereby granting unto you full Power to take Cognizance of and proceed in all Causes Civil and Maritime and in Complaints Contracts Offences or suspected Offences, Crimes, Pleas, Debts, Exchanges, Policies of Assurance, Accounts, Charter Parties, Agreements, Bills of lading of ships, and all Matters and Contracts which in any matter whatsoever relate to Freight due for ships hired and let out, transport money or maritime usury (otherwise Bottomry) or which do any ways concern Suits, Trespasses, Injuries, Extortions, Demands and Affairs Civil and Maritime whatsoever between Merchants or between Owners and Proprietors of Ships or other Vessels and Merchants or other persons whomsoever with such Owners and Proprietors of Ships and all other Vessels whatsoever employed or used, or between any other persons howsoever has made began or contracted for any matter cause or thing, Business or Injury whatsoever done or to be done as well in upon or by the Sea, or public Streams, fresh Water, ports, Rivers, Creeks, and places overflowed whatsoever within the ebbing and flowing of the Sea or High Water Mark as upon any of the Shores or Banks adjoining to them or either of them together with all and singular their Incidents Emergents Dependancies annexed and commixed Causes whatsoever and such Causes Complaints Contracts and other the Premises aforesaid or any of them howsoever the same may happen to arise be contracted had or done to hear and determine according to the Civil and Maritime Laws and Customs of the High Court of Admiralty of England in our said Island of Jamaica and Territories thereunto belonging whatsoever and also with Power to sit and hold Court in any Cities Towns and Places in our Island of Jamaica aforesaid for hearing and determining of all such Causes and Businesses together with all and singular their Incidents Emergencies and Dependancies annexed and connexed Causes whatsoever and to proceed judicially and according to Law in administering Justice therein and moreover to compel Witnesses (in case they withdraw themselves for Interest Fear Favor or Ill-will or any other Cause whatsoever) to give Evidence to the truth in all and every the Causes above mentioned according to the Exigencies of the Law And further to take all manner of Recognizances Cautions Obligations and Stipulations as well to our use as at the instance of any parties for Agreements or Debts and other Causes and Businesses whatsoever and to put the same in Execution and to cause and command them to be executed Also duly to search and enquire of and concerning all Goods of Traitors, Pirates, Manslayers, Felons, Fugitives and Felons of themselves and concerning the Bodies of persons drowned killed or by other means coming to their Death in the Sea or in any Ports, Rivers, Public Streams, or Creeks and Places overflowed, and also concerning Mayhem happening in the aforesaid places and Engines Toils and Netts prohibited and lawful and the Occupiers thereof

And moreover concerning Fishes Royal namely Whales, Riggs, Crampuses,
Dolphins, Sturgeons and all other Fishes whatsoever which are of a great and very large Bulk or Fatness by right or Customs any ways used belonging to us and to the office of our High Admiral of England, and also of and concerning all Casualties at Sea, Goods wrecked, Flotzon, Jetson, Lagon, Shares, Things cast overboard and Wreck of the Sea and all Goods taken or to be taken as derelict or by chance found or to be found, and all other Tres-passes, Misdemeanors, Offences, Enormities, and Maritime Crimes whatsoever done or committed or to be done and committed as well in and upon the High Sea as all Ports, Rivers, Fresh Waters, and Creeks and Shores of the sea to High Water Mark from all first Bridges towards the Sea in and throughout our said Island of Jamaica and Maritime Coasts thereunto belonging howsoever wheresoever or by what means soever arising or happening and all such things as are discovered and found out, as all Fines, Millers, Amerecements and Compositions due and to be due in that behalf to tax moderate, demand, collect and levy and to cause the same to be demanded levied and collected and according to Law to compel and command them to be paid and also to proceed in all and every the Causes and Businesses above recited, and in all other Contracts, Causes Contempts and Offences whatsoever howsoever Contracted or arising so that the Goods or Persons of the Debtors may be found within the jurisdiction of the Vice Admiralty in our Island of Jamaica aforesaid according to the Civil and Maritime Laws and Customs of our said High Court of Admiralty of England antiently used and by all other lawful means and methods according to the best of your skill and knowledge and all such Causes and Contracts to hear examine and discuss and finally determine (saving nevertheless the rights of appealing to our aforesaid High Court of Admiralty of England and to the Judge or President of the said Court for the time being) And saving always the right of our said High Court of Admiralty of England and also of the Judge and Registrar of the said Court from whom or either of them it is not our Intention in any thing to derogate by these Presents And also to arrest and cause and command to be arrested all Ships Persons Things Goods Wares and Merchandizes for the Premises and every of them and for other Causes whatsoever concerning the same wheresoever they shall be met with or found within our Island of Jamaica aforesaid and the Territories thereof either within Liberties or without and to compel all manner of Persons in that behalf as the Case shall require to appear and to answer with power of using any temporal Coercion and of inflicting any other Penalty or Mula according to the Laws and Customs aforesaid and to do and minister Justice according to the right Order and Course of the Laws summarily and plainly looking only into the Truth of the Fact And we impower you in this behalf to fine correct punish chastise and reform and imprison and cause and command to be imprisoned in any Goals being within our Island of Jamaica aforesaid and Maritime Places of the same the parties guilty and violaters of the Law and Jurisdiction of our Admiralty aforesaid and Usurpers, Delinquents, and Contumacious Absentees, Masters of Ships, Mariners, Rovers, Fishermen, Shipwrights, and other Workmen and Artificers whomesoever exercising any kind of Maritime Affairs as well according to the Civil and Maritime Laws and Ordinances and Customs aforesaid and their Demerits as according to the Statutes and Ordinances aforesaid and those of our Kingdom of Great Britain for the Admiralty of England in that behalf made and provided and to deliver and absolutely to discharge and cause and command to be discharged whatsoever Persons imprisoned in such Cases who
are to be delivered and to promulge and interpose all manner of Sentences and Decrees and to put the same in Execution with Cognizance and in Jurisdiction of whatsoever other Causes Civil and Maritime which relate to the Sea or Passage over the same or Naval or maritime Voyages performed or to be performed or the Maritime Jurisdiction above said with Power also to proceed in the same according to the Civil and Maritime Laws and Customs of our afore-said Court antiently used as well those of our Office mixt or promoted as at the instance of any party as the case shall require and seem convenient And we do by these Presents which are to Continue during our Royal Will and Pleasure only further give and grant unto you Henry John Hinchliffe Esquire our said Commission the Power of taking and receiving all and every the Wages Fees Profits Advantages and Commodities whatsoever in any manner due and antiently belonging to the said Office according to the Customs of our High Court of Admiralty of England committing unto you our Power and Authority concerning all and singular the Premises in the several Places above expressed (saving in all things the Prerogative of our High Court of Admiralty of England aforesaid) together with Power of deputing and surrogate in your Place for and concerning the Premises one or more Deputy or Deputies as often as you shall think fit—

Further we do in our Name Command and firmly and strictly Charge all and singular our Governors, Commanders, Justices of the Peace, Bailiffs, Constables, and all other our Officers and Ministers and faithful and liege Subjects in and throughout our aforesaid Island of Jamaica and the Territories thereunto belonging that in the Execution of this our Commission they be from time to time aiding assisting and yield obedience in all things as is fitting to you and your Deputy whomsoever under the pain of the Law and the Peril which will fall thereon—

Given at London in the High Court of our Admiral of England aforesaid under the Great Seal thereof the twentieth day of May in the year of our Lord one thousand eight hundred and four and of our Reign the forty fourth.

Arden
Registrar

Entered 6 September 1804
APPENDIX G

CARIBBEAN VICE ADMIRALTY COURT JUDGES, 1763-1815

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<td>-------- Pigott</td>
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<tr>
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Largely from Admiralty Monument Books, P.R.O. Adm. 50.
GOVERNOR'S VICE ADMIRAL'S COMMISSION (1783)

GEORGE the Third, by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, to our beloved A.B. Esq. our Captain General and Governor in Chief in and over our Province of F______, in America.

Greeting:
We confiding very much in your fidelity, care, and circumspection in this behalf, do, by these presents, which are to continue during our pleasure only, constitute and depute you the said A.B. Esq our Captain General and Governor in Chief aforesaid, our Vice Admiral, Commissary, and Deputy in the Office of Vice Admiralty in our Province of F______ aforesaid, and the territories depending thereon in America, and in the maritime parts of the same and thereto adjoining whatsoever; with power of taking and receiving all and every the fees, profits, advantages, emoluments, commodities, and appurtenances whatsoever due, and belonging to the said office of Vice Admiral, Commissary, and Deputy in our Province of F______, and the territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, according to the ordinances and statutes of our High Court of Admiralty in England.

And we do hereby remit and grant unto you the aforesaid A.B. our power and authority in and throughout our province of F______ aforesaid, and the territories depending thereon, and maritime parts whatsoever of the same and thereto adjacent, and also throughout all and every the sea-shores, public streams, ports, fresh water rivers, creeks, and arms, as well of the sea as of the rivers and coasts whatsoever of our said Province of F______, and the territories depending thereon, and maritime parts whatsoever of the same and thereto adjacent, as well within liberties and franchises, as without; to take cognizance of, and proceed in, all civil and maritime causes, and in complaints, contracts, offences, or suspected offences, crimes, pleas, debts, exchanges, accounts, charter-parties, agreements, suits, trespasses, injuries, extortions, and demands, and business civil and maritime whatsoever, commenced or to be commenced between merchants, or between owners and proprietors of ships and other vessels, and merchants or others whomsoever, with such owners and proprietors of ships and all other vessels whatsoever, employed or used within the maritime jurisdiction of our Vice Admiralty of our said Province of F______, and the territories depending thereon, or between any other persons whomsoever, had, made, begun, or contracted for any matter, thing, cause, or business whatsoever, done or to be done within our maritime jurisdiction aforesaid, together with all and singular their incidents, emergencies, dependencies, annexed or connexed causes whatsoever, or howsoever, and such causes, complaints, contracts, and other the premises above said, or any of them, which may happen to arise, be contracted, had or done, to hear and determine according to the rights, statutes, laws, ordinances, and customs anciently observed.
And moreover, in all and singular complaints, contracts, agreements, causes, and businesses civil and maritime, to be performed beyond the sea, or contracted there, howsoever arising or happening: and also in all and singular other causes and matters, which in any manner whatsoever touch or any way concern, or anciently have and do, or ought to belong unto the maritime jurisdiction of our aforesaid Vice-Admiralty in our said Province of F, and the territories depending thereon, and maritime parts thereof, and to the same adjoining whatsoever; and generally, in all and singular all other causes, suits, crimes, offences, excesses, injuries, complaints, misdemeanors, or suspected and misdemeanors, trespasses, regrating, forestalling, and maritime businesses whatsoever, throughout the places aforesaid, within the maritime jurisdiction of our Vice Admiralty of our Province of F aforesaid, and the territories depending thereon by sea or water, on the banks or shores of the same howsoever done, committed, perpetrated or happening.

And also to enquire by the oaths of honest and lawful men of our said Province of F, and the territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, dwelling both within liberties and franchises and without, as well of all and singular such matters and things, which of right, and by the statutes, laws, ordinances, and the customs anciently observed were wont and ought to be enquired after, as of wreck of the sea, and of all and singular the goods and chattels of whatsoever traitors, pirates, manslayers, and felons howsoever offending within the maritime jurisdiction of our Vice Admiralty of our Province of F aforesaid, and the territories depending thereon, and of the goods, chattels, and debts of all and singular their maintainers, accessaries, councillors, abettors, or assistants whomsoever.

And also of the goods, debts, and chattels of whatsoever person or persons, felons of themselves, by what means, or howsoever coming to their death within our aforesaid maritime jurisdiction, wheresoever any such goods, debts, and chattels, or any part thereof, by sea, water, or land in our said Province of F, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, as well within liberties and franchises as without, have been or shall be found forfeited, or to be forfeited, or in being.

And moreover, as well of the goods, debts, and chattels, of whatsoever other traitors, felons, and manslayers wheresoever offending, and of the goods, debts, or chattels of all fugitives, persons convicted, attainted, condemned, outlawed, or howsoever put or to be put in exigent for treason, felony, manslaughter, or murder, or any other offence or crime whatsoever; and also concerning goods waived, flotson, jetson, lagon, shares and treasure found or to be found; deodands, and of the goods of all others whatsoever taken or to be taken, as derelicts, or by chance found, or howsoever due or to be due; and of all other casualties, as well in, upon, or by the sea and shores, creeks or coasts of the sea, or maritime parts, as in, upon, or by all fresh waters, ports, public streams, rivers, or creeks, or places overflown whatsoever, within the ebbing and flowing of the sea or highwater, or upon the shores and banks of any of the same within our maritime jurisdiction aforesaid, howsoever, whenever, or by what means soever arising, happening or proceeding, or wheresoever such goods, debts, and chattels or other
the premises, or any parcel thereof may or shall happen to be met with, or found within our maritime jurisdiction aforesaid.

And also concerning anchorage, lastage, and ballast of ships, and of fishes royal, namely sturgeons, whales, propoisies, dolphins, kiggs, and grampusses, and generally of all other fishes whatsoever, which are of a great or very large bulk or fatness, anciently by right or custom, or any way appertaining or belonging to us.

And to ask, require, levy, take, collect, receive, and obtain for the use of us, and to the office of High Admiral of Great Britain aforesaid for the time being, to keep and preserve the said wreck of the sea, and the goods, debts, and chattels of all and singular other the premises; together with all and all manner of fines, mulcts, issues, forfeitures, amerciaments, ransoms, and recognizances whatsoever forfeited or to be forfeited, and pecuniary punishments for trespasses, crimes, injuries, extortions, contempts, and other misdemeanors whatsoever, howsoever imposed or inflicted, or to be imposed or inflicted for any matter, cause, or thing whatsoever in our said Province of F____, and the territories depending thereon, and maritime parts of the same and thereto adjoining, in any Court of our Admiralty there held or to be held, presented or to be presented, assessed, brought, forfeited, or adjudged; and also all amerciaments, issues, fines, perquisites, mulcts, and pecuniary punishments whatsoever, and forfeitures of all manner of recognizances, before you or your Lieutenant Deputy or Deputies in our said Province of F____, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, happening or imposed, or to be imposed or inflicted, or by any means assessed, presented, forfeited, or adjudged, or howsoever by reason of the premises, due or to be due in that behalf to us, or to our heirs and successors.

And further to take all manner of recognizances, cautions, obligations, and stipulations, as well to our use, as at the instance of any parties, for agreements or debts, or other causes whatsoever, and to put the same into execution, and to cause and command them to be executed; and also to arrest, and cause and command to be arrested, according to the civil and maritime laws, and ancient customs of our said court, all ships, persons, things, goods, wares, and merchandises, for the premises and every of them, and for other causes whatsoever concerning the same, wheresoever they shall be met with, or found throughout our said Province of F____, and the territories depending thereto adjoining, as well within liberties and franchises as without; and likewise for all other agreements, causes, or debts, howsoever contracted or arising, so that the Goods or persons may be found within our jurisdiction aforesaid.

And to hear, examine, discuss, and finally determine the same, with their emergencies, dependencies, incidents, annexed and connexed causes and businesses whatsoever; together with all other causes, civil and maritime, and complaints, contracts, and all and every the respective premises whatsoever above expressed, according to the laws and customs aforesaid, and by all other lawful ways, means, and methods, according to the best of your skill and knowledge.

And to compel all manner of persons in that behalf, as the case shall require, to appear and to answer, with power of using any temporal correction, and of inflicting any other penalty or mulct, according to the laws and customs aforesaid.
And to do and administer justice, according to the right order and course of law, summarily and plainly, looking only into the truth of the facts.

And to fine, correct, punish, chastise, reform, and to imprison, and cause and command to be imprisoned in any gaols, being within our Province of F____ aforesaid, and the territories depending thereon, the parties guilty, and the contemners of the law and jurisdiction of our Admiralty aforesaid, and violators, usurpers, delinquents and contumacious absenters, masters of ships, mariners, rowers, fishermen, shipwrights, and other workmen and artificers whatsoever exercising any kind of maritime affairs, according to the rights, statutes, laws, and ordinances, and customs anciently observed; and to deliver and absolutely discharge, and cause and command to be discharged, whatsoever persons imprisoned in such cases, who are to be delivered.

And to preserve, or cause to be preserved, the public streams, ports, rivers, fresh waters and creeks whatsoever, within our maritime jurisdiction aforesaid, in what place soever they be in our Province of F____ aforesaid, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, as well for the preservation of our navy royal, and of the fleets and vessels of our kingdom and dominions aforesaid, as of whatsoever fishes increasing in the rivers and places aforesaid.

And also to keep, and cause to be executed and kept, in our said Province of F____, and the territories depending thereon, and maritime parts thereof and thereto adjacent whatsoever, the rights, statutes, laws, ordinances and customs anciently observed.

And to do, exercise, expedite, and execute all and singular other things in the premises, and every of them, as they by right, and according to the laws and statutes, ordinances, and customs aforesaid should be done.

And moreover to reform nets too close, and other unlawful engines or instruments whatsoever for the catching of fishes wheresoever, by sea, or public streams, ports, rivers, fresh waters, or creeks whatsoever, throughout our Province of F____ aforesaid, and the territories depending thereto adjacent, used or exercised, within our maritime jurisdiction aforesaid wheresoever.

And to punish and correct the exercisers and occupiers thereof, according to the statutes, laws, ordinances, and customs aforesaid.

And the pronounce, promulge, and interpose all manner of sentences and decrees, and to put the same in execution; with cognizance and jurisdiction of whatsoever other causes, civil and maritime, which relate to the sea, or which any manner of ways respect or concern the sea, or passage over the same, or naval or maritime voyages, or said maritime jurisdiction, or the places or limits of our said Admiralty and cognizance aforesaid, and all other things done, or to be done.

With power also to proceed in the same according to the statutes, laws, ordinances, and customs aforesaid, anciently used, as well of mere office mixed or promoted, as at the instance of any party, as the case shall require and seem convenient: and likewise with cognizance and decision of wreck and sea, and of the death, drowning, and view of dead bodies of all persons howsoever killed or drowned or murdered, or by any other means come to their death, in the sea, or public streams, ports, fresh waters, or creeks whatsoever, within the flowing of the sea and high-water mark, throughout our aforesaid
Province of F____, and the territories depending thereon, and maritime parts of the same, and thereto adjacent, or elsewhere within our maritime jurisdiction aforesaid.

Together with the cognizance of Mayhem in the aforesaid places, within our maritime jurisdiction aforesaid, and flowing of the sea and water there happening; with power also of punishing all delinquents in that kind, according to the exigencies of the law and customs aforesaid.

And to do, exercise, expedite, and execute all and singular other things, which in and about the premisses only shall be necessary or thought meet, according to the rights, statutes, laws, ordinances, and customs aforesaid.

With power of deputing and furrogating in your place for the premisses, one or more deputy or deputies, as often as you shall think fit; and also with power from time to time of naming, appointing, ordaining, assigning, making, and constituting whatsoever other necessary, fit, and convenient Officers and Ministers under you, for the said office, and execution thereof in our said Province of F____, and the territories depending thereon, and maritime parts of the same, and thereto adjacent whatsoever.

Saving always the right of our High Court of Admiralty of England, and also of the Judge and Register of the said Court, from whom or either of them, it is not our intention in any thing to derogate by these presents; and saving to every one who shall be wronged or grieved by any definitive sentence or interlocutory decree, which shall be given in the Vice-Admiralty-Court of our Province of F____ aforesaid, and the territories depending thereon, the right of appealing to our aforesaid High Court of Admiralty of England.

Provided nevertheless, and under this express condition, that if you the aforesaid A.B. our Captain-General and Governor in Chief, shall not yearly, to wit, at the end of every year, between the feast of Saint Michael the Archangel and All Saints, duly certify, and cause to be effectually certified (if you shall be thereunto required) to us, and our Lieutenant Official, Principals, and Commissary-General and Special, and Judge and President of the High Court of our Admiralty of England aforesaid, all that which from time to time, by virtue of these presents, you shall do and execute, collect or receive in the premisses, or any of them, together with your full and faithful account thereupon, to be made in an authentic form, and sealed with the Seal of our Office, remaining in your custody, that from thence, and after default therein, these our Letters Patent of the Office of Vice-Admiralty-foresaid, as above granted, shall be null and void, and of no force or effect.

Further we do, in our name, command all and singular our Governors, Justices, Mayors, Sheriffs, Captains, Marshals, Bailiffs, Keepers of all our Gaols and Prisons, Constables, and all other our Officers and faithful Liege Subjects whatsoever, and every of them, as well within liberties and franchises as without, that in and about the execution of the premisses, and every of them, they be aiding, favouring assisting, submissive, and yield obedience, in all things as is fitting to you, the aforesaid A.B. our Captain-General and Governor in Chief of our Province of F____ aforesaid
and to your Deputy whomsoever, and to all other Officers by your appointed, and to be appointed, of our said Vice-Admiralty of F____, aforesaid, and the territories depending thereon, and maritime parts of the same, and thereto adjoining, under pain of the law, and the peril which will fall thereon.

Given at London in the High Court of our Admiralty of England aforesaid, under the Great Seal thereof, the first day of January, in the year of our Lord 1783, and of our reign the * twenty-third.

(Signed) Godf. Lee Tarrant, Registrar.

from Anthony Stokes, A View of the Constitution of the British Colonies in North America and the West Indies at the time the Civil War broke out on the Continent of America, London, privately printed, 1783.
APPENDIX I

PATTERN OF MONTHLY SEIZURES, 1776-1802 (JAMAICA)

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<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
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<th>Aug</th>
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<td>1776-83 Total</td>
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<td>65</td>
<td>75</td>
<td>65</td>
<td>36</td>
<td>40</td>
<td>30</td>
<td>21</td>
<td>44</td>
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<td>%</td>
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<td>6.6</td>
<td>5.0</td>
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<td>131</td>
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<td>86</td>
<td>75</td>
<td>83</td>
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<td>96</td>
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<td>%</td>
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<td>8.8</td>
<td>9.2</td>
<td>11.2</td>
<td>6.9</td>
<td>6.2</td>
<td>7.4</td>
<td>6.4</td>
<td>7.1</td>
<td>6.0</td>
<td>8.2</td>
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<td>1776-1802 Total</td>
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<td>196</td>
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<td>%</td>
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<td>9.4</td>
<td>10.4</td>
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<td>6.4</td>
<td>5.4</td>
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Month: 1 2 3 4 5 6 7 8 9 10 11 12

Source: Jamaican Vice Admiralty Court Cases
Tabulation: I.B.M. 6040 Computer
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303/1000-1900 " " " 1783-1802 (with typescript calendar)
304 " " " 1802-1815 (uncalendered, un-numbered)
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123 (British Honduras); 152 (Leewards); 166 (Martinique); 175
(Montserrat); 184 (Nevis); 239 (St. Kitt's); 244 (St. Croix); 245
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3836-3845, from British Consuls, 1761-1817
3849-3858, from Foreign Consuls, 1793-1820
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