

## Charles Dudley and the Customs Quandary in Pre-Revolutionary Rhode Island

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*Rhode Island History* Spring (April) 1971, pp. 53-59.

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Unquestionably the most famous incident in pre-Revolutionary Rhode Island occurred the night of June 9, 1772, when an eight-boat flotilla led by Providence mercantile magnate John Brown and Abraham Whipple, descended upon an armed revenue cutter, H. M. *Gaspee*, which had run aground off Namquit Point that afternoon while pursuing the packet *Hannah*, opened fire on her crew, seriously wounding commander Lieutenant William Dudingston, and burned the cutter to the water's edge. What had originated both as an attempt by irate citizens to rid Narragansett waters of an effective instrument of the imperial customs service and a personal vendetta against Dudingston for occasionally exceeding the limits of his authority in performing his duties was transformed into an intercolonial *cause célèbre* in September when the British government appointed a Commission of Inquiry to investigate the audacious affront to royal authority. Meeting from January 5 to June 23, 1773, the Board failed to produce evidence sufficient to bring those responsible for the outrage to justice; it did, however, engender hostility throughout the colonies. Thus a seemingly local event raised the Anglo-American controversy to yet another level by further discrediting the mother country and refining the machinery of the protest-independence movement by means of a system of standing committees of correspondence. The *Gaspee* affair has duly been accorded intensive investigation and extensive exposition.[1] Yet one potentially momentous development hitherto has not been explained: the unsuccessful attempt by Commissioner Frederick Smyth to broaden the scope of the hearing to include other provocative attacks upon royal vessels (specifically the *St. John*) perpetrated by Rhode Islanders during the previous decade.

Convinced by private intelligence received in mid-June that the "great irregularity, violence and disorder" which accompanied the shelling of the schooner *St. John* in July 1764 in Newport Harbor on order of local magistrates "might be considered as a leading cause to the destruction of the *Gaspee*." [2] Smyth recommended on June 21, two days prior to adjournment, that the Board "take the affair into consideration, and receive such information as might be procured on the subject." The question was postponed when Rhode Island Governor Joseph Wanton assured his fellow Commissioners that his son, Joseph Jr., Deputy Governor at the time of the incident, and Benjamin Vaughan, the gunner who fired the shots, could "fully explain the affair." But when Smyth insisted the following day that "a strict inquiry ought to be made on the subject," the other three members of the Board declined to take up the matter. Wanton and New York Chief Justice Daniel Horsmanden felt that "no notice whatever" should be made of the incident: Boston Vice-Admiralty Judge Robert Auchmuty "doubted" the efficacy of the move (The Commissioner most likely to have supported Smyth, Massachusetts Chief Justice Peter Oliver, had already returned to the Bay Colony.) Nonetheless, Smyth succeeded in inserting the minutes pertaining to his ill-fated motion into the official journal of the proceedings.[3]

Despite the cogency of the argument that there existed a relationship between the shelling of the *St. John* and the firing of the *Gaspee*, the rejection of Smyth's motion is understandable.[4] Governor Wanton, for obvious reasons, was inexorably opposed to enlarging the investigation because the outcome could only result in the further animadversion of his colony for its defiance of the navigation acts. Auchmuty and Horsmanden were sympathetic to the request, but were reluctant to open a veritable Pandora's Box. Although theoretically empowered to examine into the *St. John* incident,[5] to do so would have led inevitably to an investigation of the numerous altercations between residents and revenue agents which had occurred since 1764, symptomatic of the freewheeling brand of commerce which obtained in Rhode Island.[6] Besides, nearly six months of deliberations had failed to yield substantive evidence concerning the *Gaspee* despite the fact that the identity of many of those responsible for burning the vessel was common knowledge; additional inquiries would likely be equally fruitless and time consuming. Moreover, to broaden the inquiry could serve only to further alienate Rhode Islanders and cast additional aspersions

upon the already much maligned Commission. These being the pragmatic realities, why did Smyth advance his provocative proposal?

Evidence points to customs collector Charles Dudley as having directly or indirectly influenced Smyth in his effort to enlarge the probe.[7] A conversation between the two men the morning of June 12 — the source of information referred to by Smyth in making his motion — prompted Dudley to pen a scathing indictment of the disingenuous "hindrances and obstacles" employed by Rhode Islanders to circumvent the imperial acts of trade. To his mind, the firing of the *Gaspee* was "riot the effect of sudden passion and resentment, but of cool deliberation and fore-thought." [8] The reasons for conveying his thoughts to Smyth in a private manner are unknown, Perhaps he was not summoned before the tribunal: there is no record of his having rendered testimony notwithstanding his position as head of the revenue service for the entire colony. Or perhaps the native of England felt Smyth, the only Briton on the panel, would be most amenable to his entreaties.[9]

At any rate, there is no indication that he either conferred with or wrote to any of the other Commissioners.

A transcript of the letter in Smyth's hand, located among the Smyth Papers in the American Philosophical Society Library in Philadelphia, has hitherto escaped the attention of scholars and laymen alike. This is most unfortunate because the document provides additional background commentary on the *Gaspee* affair and sheds considerable light on Smyth's ill-fated motion of June 21. Further, it affords an incisive, personal account of the problems confronting the revenue service in Rhode Island. Although the discussion is limited to the pre-Revolutionary era, the implications are applicable to the colonial period as a whole. Because of its relative inaccessibility and importance to the student of the history of early America in general and Rhode Island in particular, the missive warrants printing in full. The spelling and syntax of the reproduction which follows correspond exactly to that of the transcript in the Smyth Papers.[10]

CHARLES DUDLEY TO FREDERICK SMYTH

Rhode Island 12th June 1773

Sir

The conversation I had with you this Morning has led me into a review of some of the hindrances and obstructions which the Officers of the Navy and Revenue have met with in the Execution of their Duty in this Colony within the last live Years, the time I have had the management of his Majesty's Revenue. I find it wou'd be a very tiresome Business to relate every Instance: wou'd make a Narrative too long for my present time and be tedious for Yours; moreover I wou'd chose to forbear a relation of Personal abuses and Affronts, as Events too frequently happening in other places, and confine myself to Circumstances which are less common, and perhaps not to be heard of in any Colony except this. I wou'd also forbear the mention of arty Matter which is irremediable, but as a Remark upon the Case of the Sloop *Liberty* is pertinent to the business You are now upon I will just observe: that in the Year 1769 the Commissioners of the Customs' I caused an armed Cutter to be fitted and to prevent illicit Trade and aid the Collection of the Revenue. In the Month of July in the same Year this Cutter Seized a Sloop laden with contraband Goods, brought her into the Port of Rhode Island, to put her into my charge to be proceeded against according to Law, when a Number of the People tumultously [*sic*] assembled and having previously and by violation secured the Person who commanded the Cutter they gave the Seized Sloop her *Liberty*, set the Cutter on fire under the Guns of the Fort within Sight and at a small distance from the Governor's house, where She was entirely destroyed with all her Tackle furniture and Apparel to the loss of the Revenue at least Two Thousand Pound Sterling,[12] This enormous and daring Act, so publickly done. and so unnoticed by the Civil Authority. I have always considered as a principal encouragement and perhaps the chief Cause of the subsequent and unhappy fate of Lieutenant Dudingston and his Majesty's Schooner *Gaspee*. [13]

I will now speak of Matters of Record, and which stand verified by the Proceedings of the Court of Judicature in this Colony. In consequence of an Act of Parliament made in the 7th Year of his present Majestys Reign I have repeatedly applied to the Justice of the Superior Court for Writs of Assistants.[14] and after hearing Councilll thereon the Justices of the said Court. (to wit) Stephen Hopkins.[15] James Helme,[16] Metcalf Bowler.[17] Benoni Hall.[18] and Stephen Potter,[19] Esquires at Newport on the 11th day of October 1772 did solemnly determine that such Writs are illegal and contrary to the constitution of this Colony and that the same ought not to be issued.[20] This determination of the Superior Court serves to shew the constitution of it.[21] for the Determination is certainly repugnant to the Act of Parliament before reached, and also contrary to the Practice of the neighbouring Colonies touching Writs of Assistants [22] but of this Court something more extraordinary remains to be told — In the Month of October last Lieutenant Montagu [23] of his Majesty's Ship *Mercury* (who is duly authorized to make

Seizures) Seized a large quantity of uncustomed Goods which were put into my hands to be prosecuted I accordingly libell'd them in a Court of Vice Admiralty [24] on behalf of the Crown and Seizing Officers, when upon a full and fair hearing the Goods were Condemn'd and order'd to be Sold, and the Monies arising therefrom to be divided and applied agreeable to Law and his Majesty's order in Council, after which Condemnation, Sale, and division, a Writ called a Writ of Restitution [25] issued from the justices of the Superior Court (to wit) Stephen Hopkins, James Helme, Metcalf Bowler, Benoni Hall, and Stephen Potter Esqrs. at Newport the 11th Day of March 1773 founded upon a pretended Writ of Prohibition [26] on the proceedings of the said Court of Vice Admiralty and commanding me to restore to one Nathl. Straw the said uncustom'd Goods so Seized. Condemned, etc. or the like Value thereof in Sterling Money as the said Nathaniel shou'd elect.--To this very extraordinary and unprecedented Writ I answer'd and complained, but my Plea was overruled and deemed insufficient, and I now stand Condemned by this extravagant proceedings without a legal hearing, and contrary to the Rights of the Subjects, in a Case too in which I am not a Party. otherwise than as Manager of a Prosecution of the part of the Crown to which I am bound by the Duties of my Office.[27] This is a Cause so cruel and so oppressive that the Commissioners of the Custom have transmitted it to the Lords of the Treasury and I hope from that Board it will go before his Majesty in Council from whence if I have no Relief I may suffer in my private fortune upwards of £500 Sterling, by a Proceeding as arbitrary as it is unjust, and such as I may safely say is not to be equalled.[28]

Having now Shewn You a very remarkable Instance of Oppression on an Officer of the Crown: a Solemn Determination of the Superior Court by which an Act of Parliament is eventually repealed: and a striking proof of obstruction to the Service of the Revenue in the burning of the *Liberty*. I shou'd lay down my Pen: but there is a Point or two still untouch'd which I think of equal importance, and they tempt me to go on.

The Acts of Parliament made in the 12th & 25 Years of the Reign of King Charles the Second and also in other later Reigns, having justly consider'd the Necessity of restraining the exportation of certain Goods the Produce of the Colonies, such as Peltry, Naval Stores. Masts, Yards etc. to Great Brittain only, have directed that Bonds shall be given upon the Exportation of such Goods in the Penalty of one or two Thousand Pound according to the Tonnage of the Vessell, that Such Goods shall be truly and bona tide carried to Great Brittain only. Now the Act directs that these Bonds shall be taken by the Governor of such Colony or plantation where such enumerated Goods are Shipped, and it is well understood that the Governors of the different Colonies and Provinces execute this part of their Duty by an Officer called the Naval Officer.[29]

Please to recollect Sir that the Governor of this Colony is Elective, the Governor nominates the Naval Officer, who sometimes is a Merchant, at others a Shopkeeper, at others a Tradesman. — I dare say the general Evil occurs to You already — but I will draw an inference from Facts. The present Governor has a Son, a Merchant concern'd in a very extensive Commerce, this Son is in fact the Naval Officer.[30] Suppose then he loads a Ship with Peltry, Naval Stores, Masts, Yards etc. and gives Bond to export them conformable to Act of Parliament, and upon his own Certificate (as Naval Officer) that such Bond is given, obtains the Needfull Documents for the Clearing his Ship outwards from the Custom House; after which he finds his Account in ordering this Peltry, these Naval Stores, Masts, Yards etc. to Holland or to some other Place on the Continent of Europe, rather than to Great Brittain; the Master of the Ship receives his Instructions accordingly, and by virtue of the Custom house Documents of which he is justly possess'd he navigates his Ship in safety thro' the Brittain Channel to whatever Port he pleases: lands his Cargo of enumerated Goods without the least hazard or danger in a Country where the Laws mean to restrain him, returns to his Power without Fear and openly avows his doings: The Officers of the Custom, knowing this, may apply (as is indeed their Duty) to the Naval Officer to Sue the Merchants Bond; but alas! They find the Naval Officer and the merchant are one. — Can any Man pause a moment to determine in his own Breast what has been the fate of this Bond; Perhaps you will say let the Naval Officer and his Sureties be sued and call'd to Account — You will find perhaps, that he has no Sureties that he is no longer Naval Officer: he may now be disposing of his last unfawfull Venture or moving in some other sphere; for by a Reverse of fortune not very uncommon, I have known a Man in the Seat of Government in one Year and in the humble Station of a Clerk, the next I have known a Man the Naval Officer one Year, and in the next the same Man gaining an honest Livelyhood by Bleeding and Shaving for a Penny, It has been said that the disquietudes in this Colony are recent, and were not known until a few late Years. — I believe indeed the disquietudes were not so general a few years ago as they are now, especially in respect to his Majesty's Service — for as much as relates to the Revenue I will account; it is but Justice to myself. During the time the present Governor was Collector of the Customs in this Port, which was Twenty Six Years; I believe I can safely say that £500 was not remitted into the Exchequer: since I have had the management of the Revenue, which is just five Years, I have Remitted £16,000—.

You have had an opportunity of marking the principle People in this Colony, and You find them all in Trade. The middling or lower Class are all in Trade also. — People who have been for many Years uncustom'd to restraint will naturally be impatient of it, and it is reasonable to suppose that some opposition would be given to regulations, and that the Aid of Government wou'd be sometimes necessary. — To whom was that Aid to be look for, why to a man whose Principles were certainly formed upon Ideas very opposite to mine, and from whom indeed upon a comparative view I had nothing to expect.[31] — Pray consider this Sir and draw Your conclusions, for I have almost gird my paper and must not engage You on another Sheet: and I must not part with this without observing that the Cases of the Writs of Prohibition and Restitution are too uncommon to gain Credit without

reference to the Writs themselves, and as I have taken particular Notice of those Writs in this Letter You must give me Leave to offer You Copies of them [32] for indeed they are so truly original that I would not risk my reputation to speak of them without.

I am very Much

Sir Your Humble Servt.

Chas. Dudley

Mr. Chief Justice Smyth

### Notes:

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The best general account of the Gaspee Affair is Lawrence Henry Gipson, *The British Empire Before the American Revolution*. 14v. to date (Caldwell and New York, 1936- ), XII. *The Triumphant Empire: Britain Sails Into the Storm. 1770-1776*, 24, 28. David S. Lovejoy. *Rhode Island Politics and the American Revolution, 1760-1776* (Providence, 1958), 158-66, presents an account more favorable to the colonials than does Gipson. See also William R. Leslie, "The Gaspee Affair: A Study of Its Constitutional Significance," *Mississippi Valley Historical Review*, XXXIX (September 1952), 233-56, Eugene Wulsin, "The Political Consequences of the Burning of the *Gaspee*," *Rhode Island History*, III (January and April 1944), 1-11, 55-64; and Samuel W. Bryant, "HMS *Gaspee* —The Court-Martial." *Ibid.*, XXV (July 1966), 65-72 and "Rhode Island Justice — 1772 Vintage," *ibid.* XXVI July 1967, 65-71. To appreciate the incident fully one must consult the sources which are conveniently available in published form. "A History of the Destruction of His Britannic Majesty's Schooner *Gaspee* . ." appears as part of John Russell Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England*, 10v. (Providence, 1856-65). VII, 55-192, and is preferable in every respect to William R. Staples, *Documentary History of the Destruction of the Gaspee* (Providence, 1845).

2. In June 1764 the *St. John*, Lieutenant Thomas Hill, already the object of resentment by Newport residents because of petty thievery committed by her crew, seized the brig *Basto* engaged in smuggling sugar into the colony. Upon orders signed by two magistrates, the gunner of Fort George on Goat Island commenced cannonading the revenue schooner. Townspeople joined in the shelling. Only the protection of the larger H. M. *Squirrel*, Captain Richard Smith, saved the royal vessel from destruction. The incident evoked no substantive response from either provincial or imperial authorities. For further information, consult Lovejoy, 36-37, 39; and Gipson, *British Empire*, X, *The Triumphant Empire: Thunder-Clouds Gather in the West. 1763-1766*. 243. Lovejoy and Gipson again provide different perspectives.

3 Bartlett. VII, 177. The above quotations are from this source.

4. The foremost authority on pre-Revolutionary Rhode Island concurs with Smyth's assessment of the importance of the *St. John* incident. See Lovejoy, 156, 159.

5 The Commission (September 2) and the Instructions (September 4) of the Board are in Bartlett, VII, 108-12.

6. For additional information, see Gipson, *British Empire*. x. 242-45; and Lovejoy, *passim*,

7. The son of an Anglican cleric from the western part of England. Charles Dudley, Jr., succeeded John Robinson as Collector of the Customs in Rhode Island in the spring of 1768 when the latter was appointed to the newly-formed American Board of Customs in Boston. Headquartered in Newport, Dudley continually suffered considerable physical and verbal abuse from the populace and procedural harassment from government officials in attempting to execute the navigation acts. Predictably loyal to the crown, he fled the province in November 1775. Little biographical data on him exists. but see Lovejoy, 154-56, 189-90, for a brief account of his career.

8 Dudley to ?, July 23, 1772, Bartlett, VII, 92. One assumes the letter was addressed to Rear Admiral John Montagu, among whose papers it was located.

9. Virtually nothing is known of the life of Frederick Smyth (Smythe). At the time of his appointment as Chief Justice of New Jersey in July 1764, he was a 32 year-old London attorney of no particular stature. He owed his position exclusively to friends with influence in the British government. The Revolution terminated his judicial career in 1776. Admired by rebel and loyalist alike, he was not forced to emigrate despite his pronounced Tory sentiments. During the war he removed to Philadelphia where he apparently spent the rest of his life. See Larry R. Gerlach, "Revolution or Independence? New Jersey, 1760-1776" (Ph.D. dissertation, Rutgers University, 1968), *passim*. It is not known why Smyth was named to the Commission. Certainly he was an obscure figure compared to the other members.

10. The document is published with the express permission of The American Philosophical Society.

11. In 1767 a five-member Board of the Commissioners of the Customs for America was created to facilitate the enforcement of the navigation laws. Headquartered in Boston, the American Board was responsible directly to the Treasury Department. Previously the Commissioners of the Customs resident in England had exercised jurisdiction over the colonial revenue service.

12. Dudley's account requires clarification. On July 16, 1769, H. M. *Liberty*. Captain William Reid, assigned to Rhode Island waters in May, escorted a Connecticut brig and sloop to Newport to undergo condemnation proceedings for violating the acts of trade. An altercation which erupted soon after arrival between the hands of the revenue vessel and the captain of the brig, one Packwood, ended with the former firing several musket salvos at the latter in full view of a sizable contingent of townspeople. The next evening, the 17th, after Reid had ordered his crew ashore to answer for their alleged misconduct, a mob later described as "Persons unknown" who were "chiefly from Connecticut" hauled the cutter to the dock, chopped down her mast, completely scuttled her, and climaxed a triumphant parade through town by burning two of her boats. Several days later the tide washed the wasted hulk ashore on nearby Goat Island where it was completely consumed by fire during the night. Needless to say, the seized vessels set sail during the confusion: neither British nor local authorities made a concerted effort to apprehend those responsible for the act of wanton destruction. For more details, see Gipson, *British Empire*. XII, 23; and Lovejoy, 157.

13. The Board of Inquiry concurred. In their final report to the crown on June 22, the Commissioners prominently mentioned the "plundering and burning" of the *Liberty* — along with the "violent and outrageous" treatment accorded Reid and the "impunity" with which the perpetrators of the outrage" escaped conviction — as a contributory cause of the demise of the *Gaspee*. Bartlett, VII, 180.

14. In essence a writ of assistance was a general search warrant issued for an indefinite length of time (except for mandatory renewal within six months after the death of a sovereign) designed to permit customs officials maximum maneuverability in curbing smuggling. The writ did not specify the object of a search; it stipulated, however, that a civil magistrate must accompany the revenue officer. A *cause célèbre* occurred in Massachusetts in 1761 when James Otis and Oxenbridge Thacher challenged the constitutionality of the device on the grounds that colonial supreme courts were not legally authorized to issue the instruments. The contention was technically correct; only Courts of Exchequer were then clearly empowered to grant such writs and none existed in the colonies. The Townshend revenue program of 1767 obviated the constitutional objection by specifically vesting supreme tribunals in America with the power to issue said writs. See Oliver M. Dickerson. "Writs of Assistance as a Cause of the Revolution," in Richard B. Morris, ed., *Era of the American Revolution* (New York. 1939), 40-75.

15. Stephen Hopkins of Providence was the dominant political figure in 18th-century Rhode Island. A noteworthy pamphleteer of the Revolutionary era and the leader of one of the two major factions, he clearly subordinated his mercantile interests to politics. During his lengthy career he occupied numerous posts in both local and provincial government including Governor 1755-1764; 1767-1768), Deputy (1770-1775), and Chief Justice (1750-1754; 1770-1775).

16. A member of a prominent South Kingstown family, Helme served on the high tribunal both as Chief Justice (1767; 1769) and Associate Justice (1770-1775).

17. Bowler had the distinction of representing two constituencies in the legislature: Newport (1764-1766) and Portsmouth (1767-1777). During the latter period he was annually elected Speaker of the House. Associated with the "Ward faction," he was a delegate to the Stamp Act Convention of 1765 and an Ardent Son of Liberty who later (1776-1779) corresponded with the enemy, a discovery not made until the present century. Jane Clark. "Metcalf Bowler as a British Spy," *Rhode Island Historical Society Collections*, 23 (October 1930). 101-117.

18. Benoni Hall of Exeter.

19. In addition to judicial activities, Stephen Potter represented Coventry in the General Assembly from 1769 to 1770.

20. When admonished by the Earl of Hillsborough for failing to cooperate with the customs collector, Governor Joseph Wanton emphatically denied that Dudley had ever applied to the judges for a writ of assistance and asserted that they would "readily and cheerfully give their every assistance in the execution of their duty, which the law puts in the power of the superior court to give." Moreover, he stated that Hillsborough had been "shamefully misinformed" in the matter; that in reality the revenue officials had been guilty of "abusing and misrepresenting the colony of Rhode Island and its officers." Hillsborough to Wanton and reply. July 19 and November 2, 1771, Bartlett, VII. 34-35, 42-43.

21. It should be remembered that the General Assembly annually elected the five judges of the Superior Court of Judicature, Court of Assize and General Gaol Delivery. In other words, the judiciary in Rhode Island was far from independent.

22. The action of the Rhode Island tribunal was not unusual. Most colonial courts refused to exercise the authority to grant the writs extended to them in 1767.

23. Here Dudley is mistaken on two counts. The event took place in November, not October; the commander of the *Mercury* was Captain Robert Keeler, not Rear Admiral John Montague of the Royal Navy.

24. Vice-Admiralty courts exercised jurisdiction over maritime cases and violations of the imperial navigation laws. Their procedure differed sharply from common law courts: testimony was written instead of oral and a single judge determined both the question and the sentence. (The same procedure persists today.) A detailed study is Carl Ubbelohde, *Vice-Admiralty Courts and the American Revolution* (Chapel Hill, 1960).

25. A writ issued by a court ordering the restitution of either the goods or the value to the owner because of improper or unwarranted seizure or confiscation.

26. An order issued by a higher court to a lower court directing the latter to cease legal proceedings deemed to be outside its jurisdiction or authority.

27. For the *Mercury* affair, see Ubbelohde, 168-169. The author endorses Dudley's view, observing that probably only in Rhode Island would the court "have dared to issue a prohibition on such thin legal grounds."

28. In 1773 the Superior Court permitted a damage suit in excess of £500 to be brought against Dudley for confiscating cargo from the schooner *Industry* in June 1772. The Privy Council later reversed the verdict. Ubbelohde, 170.

29. The naval officer, the lone patronage post at the disposal of the governor, was in reality a provincial customs officer. His duties included recording arrivals and departures, issuing sundry shipping papers, and superintending the acts of trade. Unsalaries, he depended upon fees and (more importantly) gratuities for income.

30. William Wanton became naval officer upon his father's election as Governor in 1769.

31. Commissioner Horsmanden was appalled by what he considered to be "a state of anarchy" in Rhode Island. As he apprised imperial authorities: the Government (if it deserves that name), it is a downright

democracy, the Governor is a mere nominal one, and therefore a cipher, without power or authority; entirely controlled by the populace, elected annually, as all other magistrates and officers whatever." He recommended uniting Rhode Island and Connecticut (likewise anarchistic in his mind) into a single royal colony. Horsmanden to the Earl of Dartmouth, February 20, 1773, Bartlett, VII, 182-185.

32. There are no copies of the writs in the Smyth Papers.