

**THE IMPACT OF THE GASPEE AFFAIR ON THE
COMING OF THE REVOLUTION, 1772-1773**

by

LAWRENCE JOSEPH DeVARO, JR.

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COMING OF THE REVOLUTION, 1772-1773**

by

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Submitted in partial fulfillment of the requirements
for the Degree of Doctor of Philosophy

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CASE WESTERN RESERVE UNIVERSITY
GRADUATE STUDIES

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THE IMPACT OF THE GASPEE AFFAIR ON THE COMING OF THE REVOLUTION, 1772-1773

Abstract by LAWRENCE JOSEPH DeVARO, JR.

In 1763 the close of the Great War for the Empire brought new problems In Its wake and an intensification of old ones with which the victor, Great Britain, would have to grapple. Regulation of commerce throughout the empire was perhaps the most far-reaching problem which England's leaders would confront. Several colonies had cultivated an illegal trade with some non-British ports, an especially troublesome situation for the British government. Efficient regulation of commerce offered the possibility of additional revenue, but colonies which traded with foreign ports were long accustomed to circumventing any mercantile restrictions which threatened to hamper their activities.

The merchants of Rhode Island were reputed to be the most notorious of smugglers in the British colonies. They chafed under commercial reorganization. New revenue laws imposed a duty upon the lucrative molasses trade of Rhode Island's merchants. Remodeled vice-admiralty courts established a system of trials without juries in courts far removed from the vicinage where the offense was committed. Navy officers, newly deputized as customs officials, swelled the ranks of the customs service. To redress their

grievances, Rhode Islanders turned to violence after 1763. The burning of a customs vessel, H.M.S. *Gaspee*, and the wounding of its officer, Lieutenant William Dudingston, were among the criminal acts in which the colony's merchants and townspeople engaged.

The *Gaspee* Affair (as it came to be known) evoked an angry response from Great Britain. Convinced that an impartial trial could not be secured in the colonies, the ministry appointed a royal commission of inquiry at Newport (the capital of the colony), to gather evidence and to seek indictments with the cooperation of Rhode Island's Superior Court. Indicted persons would be sent to England for trial.

The commission resuscitated colonials' fears of prerogative courts appointed by the king, trials without juries (five commissioners were to hear the facts), and trials out of the vicinage. The news of the commission ended a two-year period of calm in the colonies, and heightened colonial discontent toward parliamentary and ministerial measures. The political and constitutional implications of the commission were so extensive that they were destined to become topics of continental concern. The greatest clamor occurred in Virginia's House of Burgesses. Its members voted resolutions establishing a committee of correspondence while urging other colonies to do the same; by December, 1773, eleven had appointed similar bodies.

Three groups reacted vociferously to the *Gaspee* Affair: Americans opposed to the policies of Parliament and ministry, King's friends in the colonies, and the British government. To the ministry, the armed attack

upon the royal schooner and its personnel was treason; loyal colonists agreed. To Americans who had opposed reorganization after 1763, the commission of inquiry and overseas trials were an attempt to destroy American liberty. All three groups justified their grave concern by viewing the affair as a deliberate conspiracy to undermine what each of them valued most in the British constitution.

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INTRODUCTION

His Majesty's Schooner, the *Gaspee*, was among the multitude of British naval vessels assigned to survey Rhode Island commerce in the dozen years preceding the Declaration of Independence. How Rhode Island merchants struggled with and finally resolved this impediment to their trade became known as the *Gaspee* Affair. It has long been recognized by historians of the American Revolution as the essential catalyst which launched the creation of provincial committees of correspondence in the colonies. Undoubtedly the movement toward independence would have been substantially arrested in the absence of such committees. They rightly enjoy the distinction of having greatly solidified the growing colonial discord toward Parliament and ministry.

Yet historians have rendered an inconsistent appraisal of the *Gaspee* Affair and its relationship to the American Revolution. Its place in time provides a partial explanation for its obscurity as a significant historical event, for the *Gaspee* Affair occurred chronologically between two especially memorable historical episodes, the Boston Massacre of 1770 and the Boston Tea Party of 1773. Both of these events have commanded the attention of historians for the past two hundred years. *In The Boston Massacre* Hillier B. Zobel remarks that "Five years before Lexington, Concord, and Bunker Hill,

the Revolution has begun ¹. If the Revolution began with that conflict in 1770, it is also true that it did not burn brightly until late autumn of 1772 when the *Gaspee* Affair terminated a two-year period of quiescence in the colonies; it was also responsible for generating such keen interest in the other provinces that, within a matter of months, nearly all of them had created provincial committees of correspondence.

Despite the importance of the event, Bernard Bailyn, for one, passes over it, emphasizing instead the Tea Act and Boston Tea Party of 1773. He observes that these were really responsible for ending the period of calm in the colonies.² Henry S. Commager and Richard D. Morris assume the same posture as Bailyn. They write, "*We must begin somewhere...we must begin with some decisive act. It is not difficult to find that act: the Boston Tea Party.*" ³ While the *Gaspee* Affair was among the many issues which created friction "...between the colonies and the mother country...none of these precipitated an open break." ⁴ On the other hand, nineteenth century Rhode Island historians were

¹ Hiller B. Zobel, *The Boston Massacre* (New York: W. W. Norton and Co., Inc., 1970), p. 3.

² Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1967), p. 118.

³ Henry S. Commager and Richard B. Morris, eds. *The Spirit of Seventy-Six: The Story of the American Revolution as Told by its Participants* (New York: Harper and Row, Publishers, 1967.), p. 1.

⁴ *Ibid.*

notably fearless in their assessment of the *Gaspee* Affair. William R. Staples was swept up in unchecked enthusiasm for this event of which Rhode Islanders have always been boastful. Relying heavily upon Staples' scholarship and George Bancroft's encouragement, John R. Bartlett also happily conceded the importance of the event. As early as 1861 Bartlett was one of the first historians to recognize that the *Gaspee* Affair played an important role in Virginia's decision to create the first provincial committee of correspondence.⁵ While most recent histories have not given due consideration to the significance of the affair, the nineteenth-century efforts of Staples and Bartlett argue simplistically that it was the most important precipitating factor leading to ultimate independence from Great Britain. Consequently two tasks readily present themselves: the need for an exhaustive, full-length narrative of the incident; a reappraisal of the influence which it exerted upon the Revolutionary movement.

To date *Gaspee* historiography has been piecemeal and therefore incomplete. Recent studies by Lawrence H. Gipson and Merrill Jensen go further than any previous histories in evaluating the significance of the event, and its correlation with the committees of correspondence which proceeded from it. Two thoughtful articles preceded the work of Gipson and Jensen.

⁵ John R. Bartlett, *A History of the Destruction of His Britannic Majesty's Schooner Gaspee in Narragansett Bay* (Providence: A. Crawford Greene. 1861), p. 186; William R. Staples, *The Documentary History of the Destruction of the Gaspee* (Providence: Knowles, Vose and Anthony, 1845). University Microfilms, American Culture Series, University of Michigan.

⁶ Lawrence H. Gipson, *The British Empire Before the American Revolution. Vol. XII: The Triumphant Empire: Britain Sails into the Storm, 1770-1776* (New York: Alfred A. Knopf. 1965). pp. 24-37. Merrill Jensen, *The Founding of a Nation: A History of the American Revolution 1763-1776* (New York: Oxford University Press, 1968), pp. 425-31.

In 1944 Eugene Wulsin investigated the relationship between the affair and the formation of the committees. In 1952 William P. Leslie, using a constitutional framework, offered new insights into the incident.⁷

But it was not the purpose of Wulsin or Leslie to recount the story in its entirety. As a result of their limited objectives both articles leave important areas unexplored or put forth ideas which need to be amplified, modified or discounted. This study attempts to remedy these deficiencies, at the same time analyzing the event in conjunction with recent scholarship relating to the American Revolution.

For two reasons it seemed appropriate to consider the *Gaspee* Affair in the light of Bernard Bailyn's *The Ideological Origins of the American Revolution*. The new questions raised and avenues opened by Bailyn's study have forced historians to re-think traditional conceptions of the American Revolution and to cast it in different terms. Consequently Bailyn's argument warrants careful consideration in any reappraisal of the events preceding the break with England. Secondly the *Gaspee* Affair provides a unique case study for Bailyn's argument, one that considers British as well as American attitudes toward the Revolution. For the affair was really two

⁷ Eugene Wulsin, "The Political Consequences of the Burning of the Gaspee," *Rhode Island History*, 111 (January, 1944), 1-11, and 111 (April, 1944) 55-64. William K. Leslie, "The Gaspee Affair: A Study of Its Constitutional Significance," *The Mississippi Valley Historical Review*, XXXIX (September, 1952), 233-56.

events: the predicament of the *Gaspee* schooner In Rhode Island was only one problem; the full-fledged response which it elicited from the British ministry was the other.⁸

The reactions of Americans, of the King's friends in the colonies, and of the ministry were all dependent upon shared attitudes. Their beliefs and ideas were frequently based upon rumor and misinformation, factors which receive special attention in this investigation. The attitudes of these contemporaries are perhaps of far greater importance than the attitudes of historians, despite the latter's advantage of perspective. How Americans viewed the event and how the ministry (and the friends to Government) responded to it are crucial in determining its effect upon the American Revolution.

Governor Thomas Hutchinson of Massachusetts, an unflinching and loyal subject of King George III, warned that the affair "...will certainly rouse the British lion, which has been asleep these four or five years"; he added, "If it is passed over, the other colonies will follow the example."⁹ Far surpassing the evaluation of Hutchinson, Undersecretary of State, John Pownall, an important figure in the formulation of ministerial colonial policy,

⁸ Ira Gruber has investigated aspects of the Bailyn thesis from the British point of view, although the *Gaspee* Affair is conspicuously absent from his discussion. Ira D. Gruber, "The American Revolution as Conspiracy: The British View," *The William and Mary Quarterly*, XXVI (July, 1969), 360-72.

⁹ Thomas Hutchinson to Samuel Hood, 2 September, 1772, John R. Bartlett, *History of the Gaspee*, p. 51.

considered the Rhode Island problem "...five times the magnitude of the Stamp Act.... " ¹⁰ Americans were in substantial agreement with Pownall, be they friends of the King, or friends of liberty. To measure how much significance contemporaries attached to the Gaspee Affair of 1772-1773, and how seriously they pondered the issues involved in that controversy, will help explain the impact which the event exerted upon the movement for independence.

¹⁰ John Pownall to the Earl of Dartmouth, 29 August, 1772, *Historical Manuscripts Commission*, Fourteenth Report, Appendix. Part X, *The Manuscripts of the Earl of Dartmouth*, Vol. II: *American Papers*, p. 91.

CHAPTER I

RHODE ISLAND'S RECALCITRANCE

In 1763 the close of the Great War for the Empire brought in its wake a host of new problems and an intensification of old ones with which the victor, Great Britain, would have to grapple. Regulation of trade throughout the empire was perhaps the most far-reaching problem which England's leaders would eventually be forced to confront. Illegal trade patterns, developed by individual colonies with ports outside of the British empire, presented a particular problem. Efficient regulation of commerce offered the possibility of additional, badly needed revenue, but colonials who traded with foreign ports were long accustomed to circumventing mercantile restrictions.

Merchants from these colonies were destined to experience the greatest repercussions from trade reorganization. Such were the merchants of the colony of Rhode Island and Providence Plantations, reputed to be the most notorious and inveterate of smugglers in the British colonies. Geography had ably assisted them in their illicit trade endeavors. The colony contained about 1,200 [correction] square miles. In the north, the town of Providence, and the numerous other coastal and inland towns upon the colony's mainland, comprised what was known as Providence Plantations. At the southern end

of the colony lay Rhode Island with its principal city, Newport. Of the two primary towns the southern metropolis was the larger. Both towns had been founded within three years of each other in the first half of the eighteenth century. Yet Providence, languishing under an agricultural economy for the first few decades of its existence, had never really equaled its southern competitor.¹

Between the mainland and Rhode Island lay the vast Narragansett Bay, enveloping several smaller islands. Running a distance of twenty-eight miles from north to south, the Bay encompasses Prudence and Conanicut Island[s] as well as the peninsula of Bristol. Bristol's other two boundaries are formed by the bays of Bristol and Mt. Hope. The furthestmost southern points are bounded by Block Island Sound and Rhode Island Sound. These, along with the numerous other tributaries, enter into the Atlantic Ocean. The insular nature of the colony plainly indicated the tribulations and problems which would confront customs officers while assigned to this station.

Rhode Island's geography delighted its native merchants as much as it frustrated the navy officers who represented the crown. In fact the blessings which the water bestowed on the fathers of one generation were also extended to the sons of another. Here, as in other colonies, maritime commerce became a family affair and sons built upon the inheritances which

¹David S. Lovejoy, *Rhode Island Politics and the American Revolution, 1760-1776* (Providence: Brown University Press, 1958). p. 18; Charles M. Andrews, *The Colonial Period of American History*, Vol. II: *The Settlements* (8th printing; New Haven: Yale University Press, 1964), p. 7.

their fathers passed down to them. There were several financially well-endowed families in the colony whose ancestors had begun with little or nothing--families such as the Browns, Greenes, Hopkins, and Wantons who could boast of handsome fortunes by the mid-eighteenth century.

Shipping and merchandizing were the two routes which commercial occupations followed. By necessity the colony was led to shipping from the start. Aside from timber Rhode Island had little that the mother country wanted, a condition common to much of New England in the colonial period. However Rhode Island, as all of the colonies, by law was dependent upon England for its manufactured goods. The inherent liability in such a system meant that, because Rhode Island bought more than it sold, there would be a drain on specie in the colony and the balance of payments would be overwhelmingly in favor of the mother country.² To correct this problem the colony had turned to trading with areas inside and outside of the empire.

Shipping fortunes were made in one of two ways, or a combination of both. The coastal trade involved local commerce in and around Rhode Island ports. The extent of this trade was evidenced by the numerous packet boats which plied their way between Newport and Providence, carrying local produce, dairy products, timber, and oysters. Other coastal trade involved the neighboring eastern seaport towns, such as Philadelphia, New York, Boston, and regions as far north as Casco Bay, Maine. Foreign trade was

² Lovejoy, *Rhode Island Politics*, p. 19.

the other way in which shipping might accrue profits for merchants who brought their vessels to British or non-British colonies. 'The favored non-British ports were those in the foreign West Indies, particularly the French islands and the South American Dutch colony of Surinam.³

The goods which Rhode Islanders brought back with them from England or elsewhere might be sold for local consumption or transported to neighboring seaports for sale there. One individual might be involved simultaneously in foreign and coastal shipping, as well as merchandising or shop keeping. And the commodity which was most highly prized was foreign West-Indian molasses, although a small percentage came from the British West Indies as well. It was used in the local distillation of rum which might be consumed in the colony, or shipped to other ports. Molasses was also sold to other rum-producing regions such as Philadelphia, Boston and New York.⁴

Trade with [the] foreign West Indies remained relatively unencumbered until the commencement of hostilities between England and France in 1756. Although the Molasses Act of 1733 placed a prohibitive duty of 6d. per gallon on all molasses produced in the foreign West Indies, Rhode Island merchants had successfully evaded the act through the years. The informal arrangement between customs officers and merchants permitted foreign molasses to

³ *Ibid.*

⁴ *Ibid.*

enter duty free in return for some recompense for the customs collector. Since much of the molasses trade was centered in the French West Indies, the outbreak of the Great War for the Empire between the two giant European rivals inevitably spelled the doom, at least temporarily, of the easy harvests (estimated at 6000 hogsheads annually of foreign molasses) which Rhode Island merchants had enjoyed in the foreign West Indies.⁵

The end of the war brought a new enforcement of the Molasses Act. John Temple, Surveyor-General for the region including Rhode Island, had sent down the directive that the Molasses Act would be vigorously enforced as of January, 1764.⁶ As a result of Temple's determination merchants had to make a decided effort to evade the duty or risk economic ruin. In January, 1764, Rhode Island merchants, through their General Assembly, protested the enforcement of the act and bemoaned the hardship which it would bear upon Rhode Island commerce if the letter of the law were upheld.⁷

Not satisfied with a mere protestation to Parliament, some merchants were determined to continue their evasion of the law. The members of the merchant firm of Nicholas Brown and Company instructed one of its ship captains, Abraham Whipple, to avoid the patrol of the men-of-war in Narragansett Bay by urging him to

⁵ Frederick B. Wiener, "The Rhode Island Merchants and the Sugar Act," *The New England Quarterly*, III (July, 1930), 488.

⁶ Lovejoy, *Rhode Island Politics*, p. 35.

⁷ Wiener, "The Rhode Island Merchants," 492.

... come in by the light house in the night we hope to have in good order by the Time of your arrival but if you fall into the Westward it may be best to come in that way upon the whole we submit to your Case and prudence under God, not in the least doubting but what you'll youse your Utmost to promote our Interest....⁸

The Browns urged him to arm his vessel in case he failed to elude the patrolling men-of-war:

... we advise you to get Two swivel guns & amantion at Stacia or St. Thomas's Incase you dont obtain proper papers, and suffer nothing to come on bord you on this Coast of Bay, or anywhere elce where you may aprehend Danger from the Persons who may Presume to Visit you.⁹

Strong measures indeed, to protect a molasses shipment from confiscation by authorized customs personnel!

By the time the Rhode Island memorial arrived in England, Parliament had already enacted the Revenue Act (Sugar Act) in April, 1764.¹⁰ While it reduced the prohibitive duty of 6d. to a revenue duty of 3d. per gallon, the act did not please those Rhode Islanders who continued to view the lower duty as a tax upon the molasses trade. In November the colony's General Assembly protested these economic restrictions in another memorial to the King.¹¹ Rhode Islanders' objections to the Revenue Act went beyond Parliament's effort to tax colonial commerce in order to augment the

⁸ Nicholas Brown and Company to Abraham Whipple, Providence, 28 February, 1764, Abraham Whipple Papers, William L. Clements Library, University of Michigan.

⁹ *Ibid.*

¹⁰ Wiener, "The Rhode Island Merchants," 496.

¹¹ Lovejoy, *Rhode Island Politics*, p. 40.

revenue of government. Merchants protested new trade restrictions which encumbered commerce to a considerable extent.

The new restrictions were undoubtedly the most bureaucratic yet devised. In the past colonial merchants had circumvented payment of customs on foreign commodities. A merchant could evade the molasses duty of 6d. per gallon in return for some gift to the customs collector, fruits, wines, or small payments of money.¹² The Revenue Act created a web of paper work intended to end customs evasion, not only by verifying the cargoes of colonial vessels, but also by rendering circumvention of the laws cumbersome, risky, and unprofitable.¹³

Under the new requirements a typical voyage might look something like this: any master of a vessel planning to carry the commodities of a non-British port to the colonies was required to obtain an affidavit testifying to the quantity, quality, and geographical origin of the product. Another document, itemizing the contents of the master's cargo, was required from the customs collector at the point of origin. This certificate was made in duplicate, the copy going to the customs collector at the other end of the voyage. The master was also required to testify under oath that his sworn statement corresponded with the actual cargo. Should there be a discrepancy

¹² George L. Beer, *British Colonial Policy, 1754-1765* (Gloucester, Mass.: Peter Smith, 1958). pp. 231-232; Franklin B. Dexter, ed., *The Literary Diary of Ezra Stiles* (New York: Scribners, 1901), I, 270-71.

¹³ Merrill Jensen, *The Founding of a Nation: A History of the American Revolution, 1763-1776* (New York: Oxford University Press, 1968), p. 50.

between his cargo and what he declared, he would be charged the necessary duty. Other requirements included a cocket or enumeration of all goods on board, including a notation of paid duties, as well as a record of the name of the shipper and the consignee. If a captain did not have a cocket in his possession, his cargo was subject to forfeiture. He also was required to show that bond was given for his cargo.¹⁴ Opposition to the Revenue Act continued until the end of the decade although no amount of colonial protest was sufficient to compel Parliament to repeal it.

The Stamp Act of 1765 was another major component of the new revenue measures for the colonies. It would specify articles which would now be required by law to bear a stamp. While it included legal documents such as wills, marriage licenses, birth certificates, along with newspapers, almanacs, playing cards and dice--what most concerned merchants was the inclusion of the tax on documents used in the daily transaction of trade and commerce, such as certificates, cockets and bonds.¹⁵

Rhode Island merchants, particularly Samuel Vernon and William Ellery of Newport, were in the vanguard of the protest movement against the act.¹⁶ The resignation of Augustus Johnson, the stamp collector for Rhode

¹⁴ *Ibid.*, pp. 49-50.

¹⁵ Danby Pickering, ed., *The Statutes at Large, from Magna Charta to the End of the Eleventh Parliament of Great Britain* (Cambridge and London, 1762-1814), XXVI, 179-204.

¹⁶ Lovejoy, *Rhode Island Politics*, p. 101.

Island, was their objective. Johnston and two of his colleagues who had supported the act, Martin Howard, Jr., and Dr. Thomas Moffat, were first hanged, then burned, in effigy. Although Johnston's resignation as stamp collector had saved his home from destruction and his person from physical assault, his two colleagues' homes were ransacked by an angry Newport mob.¹⁷ Similar acts of vandalism were committed throughout the other colonies as well.

The repeal of the Stamp Act in 1766 released a frenzy of rejoicing in Rhode Island and elsewhere. But within a year of their celebration colonials learned of another attempt to raise revenue in the colonies. Mercantile opposition was triggered once again. Under the leadership of Charles Townshend, Chancellor of the Exchequer, duties were proposed on lead, paper, paint, glass and tea imported to British North America from Great Britain. Rhode Islanders were not unduly alarmed by these duties.

However the appointment of five commissioners of customs for America, who would oversee the collection of revenue in the colonies, had as great an impact in Rhode Island as it did in other colonies. Because the ministry believed Boston to be the seat of illicit trade and the focal point of opposition to most British revenue measures, the commissioners' headquarters would be located in that city.¹⁸ The appointment of John Robinson

¹⁷ *Ibid.*, pp. 104-07, *passim*.

¹⁸ Jensen, *Founding of a Nation*, p. 228.

to the board simply made it more objectionable to Rhode Islanders. While Collector at Newport he had vigorously enforced trade laws there.

Because the Townshend duties did not have the effect upon Rhode Island trade that the Molasses and Sugar Acts had had, Newport and Providence merchants were reluctant to enter into non-importation agreements. Other colonies had already done so in 1765 to force the repeal of the Stamp Act, and now, in 1767, they were again boycotting British manufactured goods. As late as 1769 Rhode Islanders were still involved in business activity with the mother country, much to the disgust of the boycotting merchants throughout North America.¹⁹

After considerable pressure from merchants in other colonies, Newport entered into a non-importation agreement in July, 1769, two years after the passage of the Townshend revenue scheme. With the repeal in 1770 of all those duties with the exception of tea, Newport merchants swiftly abandoned economic boycott of British goods even though other American merchants continued non-importation. A trade embargo imposed upon Rhode Island by many American ports compelled Newporters to reintroduce non-importation, but the blatant, economic self-interest of the Rhode Islanders had led several other colonies to continue the injunction upon Rhode Island commerce.²⁰ Ultimately the colony's trade suffered as angry merchants

¹⁹ Lovejoy, *Rhode Island Politics*, p. 143.

²⁰ *Ibid.*, p. 145.

throughout the colonies boycotted Rhode Island rum, and turned their backs on molasses and sugar, the bases of the colony's economy.²¹

Trade impairments raised by the implementation of the Molasses Act of 1733, the Revenue Act of 1764, the Stamp Act of 1765, and the Townshend duties of 1767 were only part of the story related by the post-1763 trade revisions from England. In addition to the ministry's attempt to strengthen the customs regulations in order to produce more revenue from colonial trade, the legislation of this period called for basic revisions in the vice-admiralty courts of North America.

On the eve of these changes eleven vice-admiralty courts existed in the colonies.²² The first major alteration was included in a clause in the Revenue Act of 1764, providing for the creation of a new court at Halifax, Nova Scotia. It would have authority over all of North America. Customs collectors filing libels in a vice-admiralty court could do so at one of three places: Halifax, the provincial vice-admiralty courts, or the colonial common-law courts. Although the new judge at Halifax, William Spry, presided over all of North America, the provincial vice-admiralty judges enjoyed concurrent jurisdiction with him.²³

²¹ *Ibid.*

²² The courts included: Newfoundland and Nova Scotia; Massachusetts, New Hampshire and Rhode Island; New York, Connecticut, and New Jersey; Maryland, Pennsylvania and Delaware; Virginia; Georgia; North Carolina; South Carolina. Carl Ubbelohde, *The Vice Admiralty Courts and the American Revolution* (Chapel Hill: The University of North Carolina Press, 1960), p. 5.

²³ *Ibid.*, p. 50

Customs collectors were given preferential treatment by the new provisions in court procedure. The collectors were protected from legal action by aggrieved merchants. The merchants were not permitted to sue the informant, usually the collector, even though a merchant might be subsequently exonerated of the original charge, if the admiralty judge recorded that a "probable cause" had existed for the seizure. Therefore the merchant did not have the opportunity to recover any of his court expenses as a result of his appearance before the vice-admiralty judge. Most unprecedented from the colonial point of view was the provision which required the accused to provide the court with proof of his innocence. Any customs collector could make an arbitrary charge against a merchant, and the charge would be sustained if the merchant could not prove his innocence.²⁴

The duties of the new Halifax court included hearing grievances which merchants did not wish to take to the provincial vice-admiralty courts, and hearing cases of appeal. But it is doubtful that the Halifax tribunal contributed in any significant way to consolidation and unification of the vice-admiralty court system in North America. Colonials did not consider the court as an agency for their better welfare. Instead, they registered protests against it. Halifax was about 650 miles distant from Boston, the nearest major port. The services which the court might offer were of no practical use to merchants residing in such far-off towns as Charleston or Baltimore.

²⁴ *Ibid.*, pp. 50-51.

Another objection was Judge Spry's salary of £800 which was to be paid by successful condemnation of seizures, or from the naval food stores fund if he could not realize his salary through condemnations.

The fact that customs collectors were protected from merchants' suits to recover damages for unjust seizures, and the fact that the accused had to prove his innocence, constituted the list of complaints with which colonial merchants charged the new court.²⁵ The issue of trial without jury would become a point of opposition as well, although colonials had lived with this aspect of vice-admiralty courts for years and had found the procedure to be speedy and useful.²⁶

Rhode Islanders [evinced] a negative reaction to these changes. As in other colonies the merchants in Rhode Island were aware of the advantages which vice-admiralty courts offered. For one thing the absence of a jury simplified court procedures, thus saving the court and the litigant time and money.²⁷ But Rhode Island merchants were not likely to react positively to the fact that the "supercourt" at Halifax operated against the likelihood of a local trial by a vice-admiralty judge in the colony of Rhode Island.

Traditionally the Massachusetts vice-admiralty court had jurisdiction in Rhode Island.²⁸ The situation was changed in 1758 with the creation

²⁵ *Ibid.*, pp. 61-63.

²⁶ *Ibid.*, pp. 63-64. Charles M. Andrews, "Introduction," to *The Records of The Vice-Admiralty Court of Rhode Island, 1716-1762*, Dorothy S. Towle, ed. (Washington: The American Historical Association, 1936), p. 60.

²⁷ Andrews, "Introduction," p. 60.

²⁸ *Ibid.*, p. 82.

of a vice-admiralty court for the colony. A local resident, John Andrews, became the new judge and kept his tenure for several years. When the Halifax court was created in 1764 it generated once again the issue of local jurisdiction.²⁹ However, much unfounded anxiety was raised by the creation of this court.³⁰ While it assumed operations in October, 1764, it did not have its first real condemnation until March, 1765, when Collector John Robinson of Newport bypassed the provincial vice-admiralty court of Massachusetts. The Massachusetts court had jurisdiction in the region where the seizure had been made by the Rhode Island customs officials. But Robinson decided to take his case to Halifax instead. In any event, Halifax never became the popular legal alternative it was intended to be.³¹ Although Robinson did win his case, he was reluctant to appeal to Halifax thereafter, mostly because of the opposition voiced toward a court far removed from the locale where the seizure had taken place.³²

The problems raised by the vice-admiralty court at Halifax were revitalized by Townshend's revenue scheme of 1767. The power of the Halifax court would be diffused along the Atlantic coast by the creation of four regional vice-admiralty courts at Halifax, Boston, Philadelphia and

²⁹ Lovejoy. *Rhode Island Politics*, p. 92.

³⁰ Ubbelohde, *Vice-Admiralty Courts*, pp. 64-65.

³¹ *Ibid.*, p. 69.

³² *Ibid.*, pp. 69-70.

Charleston.³³ As in the case of the former "supercourt," the new district tribunals would not replace the provincial courts. Rather they would serve as additional legal recourse for those who chose to make use of them. But they were not to be courts of last appeal.³⁴ As in previous years, Rhode Islanders once again found themselves under the legal umbrella of a vice-admiralty court with its seat in Massachusetts rather than in Rhode Island. In addition to the traditional concerns for court proceedings in the vicinage of the offense, Rhode Islanders viewed with uneasiness requirements in the new revenue laws of the 1760's which provided for the trial of revenue cases in vice-admiralty courts, rather than in a Court of the Exchequer as in England.³⁵

Merchant opposition in Rhode Island to changes in revenue laws and vice-admiralty courts was only part of the problem. Reorganization of the colonial customs bureaucracy created a genuine and significant uproar among American merchants. In 1763 the Grenville ministry had piloted through Parliament a proposal commissioning officers in the navy to act as customs

³³ The Halifax court comprised: Quebec, Newfoundland, Nova Scotia; the Boston Court: New Hampshire, Massachusetts, Rhode Island, and Connecticut; the Philadelphia court: New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia; the Charleston court: North Carolina, South Carolina, Georgia, and Florida. Ubbelohde, *Vice-Admiralty Courts*, p. 131.

³⁴ *Ibid.*, pp. 131-132.

³⁵ Provisions In the Sugar Act, Stamp Act, and Townshend Acts, stipulated that violations of revenue laws be tried In vice-admiralty courts. Ubbelohde, *Vice-Admiralty Courts*, p. 75.

officials who would patrol the high seas and the small bays and inlets near colonial ports. Seizure of vessels involved in illicit trade was their objective.

Along with the many British navy officers staffing the men-of-war serving as customs vessels, increased numbers of customs personnel augmented the corps of British officers in America. The Reverend Mr. Ezra Stiles, Newport Congregational minister and literary diarist, lamented the "...swarm of Officers, that like the plague they devour all before them."³⁶ Most outbursts of violence could be traced in some way to the presence of British officers, their craft, and what they had come to do.

To add to the merchant displeasure, many of the newly commissioned officers took small pains to cover their contempt for local residents, whom they were convinced were all engaged in smuggling.³⁷ Solomon Southwick, printer of the *Newport Mercury*, indicated the empathy he had for ill-treated Philadelphians when he carried the following account in his paper:

One of the ships which sneaked out of Boston harbour, is watching for prey in our river, when, in a manner, below the dignity of any thing but--, they fire at, bring to, board, ransack, swear and tear at every vessel, shallop, flat &c....and in a most underhand manner, take every low method to obtain intelligence. Last week they seized a

³⁶ Dexter, *Literary Diary of Ezra Stiles*, I, 270.

³⁷ General Thomas Gage, in writing to his superior in England, Lord Barrington, noted that "Smuggling is no Novelty...." His attitudes were typical of most British officials in North America. Gage to Lord Barrington, Secretary of War. 1 July, 1772, Clarence E. Carter, ed., *The Correspondence of General Thomas Gage with the Secretaries of State, 1763-1775* (New Haven: Yale University Press, 1931), I, 611.

shallop belonging to Chester, loaded with flour and lumber, and maltreated the skipper; on which the owner sued the officer, and he was taken by the sheriff, when the Capt. and several hands from the man of war came on shore, rescued it, together with the man, on board his ship.³⁸

Arbitrary behavior and rough treatment by navy officers was a frequent complaint in Rhode Island newspapers.³⁹ And Rhode Islanders responded to their grievances with violence.

On May 18, 1769, Jesse Saville, a tidewater who worked under customs-collector William Checkley in Providence, had an unfortunate encounter with irate citizens who felt that Saville had exceeded the bounds of his responsibilities. As a tidewater his duties included boarding a vessel about to dock, and remaining on board until the goods were unloaded. According to the Commissioners of Customs at Boston, Saville was attacked while he was on duty. The group of ruffians gagged him, placed him in a wheelbarrow, and pushed him to the wharf. After his face was covered, they stripped him naked, cut up his clothing, and covered him completely with turpentine and feathers, capping the indignity with a severe beating. The Boston commissioners offered a reward of fifty pounds sterling to anyone who could bring to light information which would lead to the conviction of the

³⁸ *Newport Mercury*, 22 June, 1772.

³⁹ Reports of the behavior of Lieutenant William Dudingston in 1769 as well as in March, 1772, in the *Newport Mercury* indicated the treatment which navy captains often dealt out to local people.

⁴⁰ Andrews, *The Colonial Period*, p. 211.

guilty persons.

"A Spectator" attempted to set the record straight by providing *the Providence Gazette* with his version of the event of May 18. He questioned the verity of the commissioners' statement, insisting that Saville was not "...on Duty as an Officer when taken."⁴¹ He added:

The Affair was not intended to obstruct him in his Duty, or deter other Officers in the Execution of their Trust, so long as they keep within Proper Bounds. The Truth is, he was daubed with Turpentine, and had a few feathers strewed on him; but in every other Respect was treated with more Tenderness and Lenity than is perhaps due an Informer.⁴²

Apparently the tidewater's encounter with the mob was the result of his having testified against a local merchant in a case involving condemnation of a vessel. "The Spectator" was correct in his judgment that Saville was not on duty, as the vessel on which he was found was not docking or unloading. Saville as tidewater had no business searching for smuggled goods, and certainly not in the dead of night.

The fate of Jesse Saville was illustrative of the contempt which colonials harbored against British officials. But petty officers were certainly not the only victims of Rhode Island wrath. Collector Charles Dudley's activities had created more problems than he had anticipated. Dudley was an Englishman who came to Rhode Island in 1768 as Collector of Newport, replacing John Robinson who had been appointed a Commissioner of Customs at

⁴¹ *Providence Gazette*, 24 June, 1769; 10 June, 1769.

⁴² *Ibid.*

Boston.⁴³ Little is known of Dudley's background. His father was an Episcopal minister in western England, and the Reverend Mr., Stiles spoke with disdain of the cleric whom he called the "....omnis Homo of the Parish [who] could by his Influence...." and in fact did, secure the post of Newport Collector for his son, Charles.⁴⁴

Upon coming to Rhode Island Dudley won the affection of at least one Rhode Islander, Catherine Cooke, whom he took as his wife. They eventually set up house in a spacious, comfortable dwelling in Middletown, close to his work.⁴⁵ In Stiles' opinion Dudley was not much better than his father. It was not simply the means by which the new collector received his appointment which made him unpopular. According to Stiles, Dudley behaved arbitrarily in office, discriminating between friendly merchants and unfriendly ones. Stiles was convinced that Dudley was determined to single out those merchants who had opposed the Townshend duties--those who had participated in non-importation.

Dudley pretended to be above accepting gifts from merchants. But he did in fact accept presents from some and turned his head the other way

⁴³ In September, 1772, Robinson would go on to become a member of the Treasury Board in England.

⁴⁴ Dexter, *Literary Diary of Ezra Stiles*, I, 270.

⁴⁵ William B. Shaw, "Charles Edward Dudley," *Dictionary of American Biography*, Allen Johnson and Dumas Malone, eds. (New York: Scribner's Sons, 1930), V, 480.

⁴⁶ Dexter, *Literary Diary of Ezra Stiles*, I, 270.

when their vessels came from foreign ports laden with illicit commodities. Stiles said, "I have known Collector Dudley to refuse a present, a Cask of Wine or &c. and tell the Other (whom he went to befriend) that he was obliged to refuse all Gratuities and dare not take any Thing...." ⁴⁷ In another instance, Stiles heard that a captain "....wheeled home to the Collector Wines Fruits &c. and they were not rejected nor returned. I have been informed of much higher Customhouse Frauds and Peculations." ⁴⁸

Dudley's "peculations" brought Rhode Island tempers to the boiling point in 1771. He decided to make a search of a vessel although he did not have a writ of assistance in his possession, and did not plan to make his search in the presence of a law officer. The writ of assistance did not in itself authorize a customs collector to search. This power was usually provided in the collector's commission or by a search warrant. The writ merely assured the searcher the protection or assistance of a constable or other law officer while the search was being executed. Although it did not authorize or direct the constable to do the searching himself, it did acknowledge the power of the customs collector to conduct a search. When accompanied by a law enforcement official the customs collector would be assured that peace and order would prevail during the search insofar as the officer could command the cooperation of the citizenry. ⁴⁹

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*, pp. 270-71.

⁴⁹ O. M. Dickerson, "Writs of Assistance as a Cause of the American Revolution," *The Era of the American Revolution*, Richard B. Morris, ed. (New York: Columbia University Press, 1939), p. 45.

Dudley had several times made application for a writ of assistance from the superior court. Because the court did not have a quorum when the application was made, the matter was deferred until a later date. On another occasion Dudley failed to obtain a writ of assistance from the Rhode Island Superior Court.⁵⁰ He therefore decided to proceed without the assistance of a writ and a law officer.

Late one evening in April, 1771, Collector Charles Dudley went alone to a Newport wharf, boarded a docked vessel and began his search for undeclared goods. To his surprise he met with a group of men who "beat him up" brutally, Dudley maintained that his attackers were residents of Newport. Governor Joseph Wanton insisted that they were drunken sailors who had little respect for the law let alone deference to British officials.⁵¹

Lord Hillsborough, the Secretary of State for the colonies, protested this action in a letter to the governor, chastising the Rhode Island officials for not offering protection to the collector while he was about his business. The judges of the superior court were also called to order for their refusal to issue Dudley a writ of assistance upon request. When the

⁵⁰ *Ibid.*, pp. 49-50.

⁵¹ The Governor of Rhode Island to the Earl of Hillsborough. Rhode Island, 2 November, 1771, John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England* (Providence: 1857), VII, 43.

General Assembly later interviewed the members of the court, the justice's stated upon their honor that they had received no application for a writ from Dudley.⁵² They were not falsifying any information. According to common law it was necessary for an applicant to state specifically an instance of a trade violation and the place to be searched before a writ of assistance could be issued to him. According to the justices, Dudley had cited neither a particular violation nor a location for the search, and therefore his application for a writ had not been recognized by the court.⁵³

In commenting upon Dudley's "comeuppance," Rhode Island's attorney general Henry Marchant compared Dudley to his predecessor John Robinson, who had also attempted to disrupt commerce in Rhode Island. He advised that Dudley "....had better learn from Robinson's Fate to know when his Bread is well buttered & be content where Robinson confesses now he lived like a Prince & wishes he had been so wise to have been contented." ⁵⁴

Such strong feelings led to other violence in addition to attacks upon customs personnel. The presence of naval vessels was obviously a tangible reminder of the new state of affairs, and attacks upon them were frequent enough occurrences to be considered anything but exceptional. The first

⁵² *Ibid.*, p. 42.

⁵³ Dickerson, "Writs," p. 51.

⁵⁴ Henry Marchant to a Mr. Hazard, London. 15 May, 1772, Rhode Island Historical Society Miscellaneous Collections, VI, p. 39. In citing this letter, David Lovejoy noted that Merchant was writing to George Hazard.

incident in Rhode Island occurred on July 9, 1764. Lieutenant Thomas Hill was commander of the schooner *St. John*.⁵⁵ His was one of the several vessels which Admiral Alexander Colville, commander of naval forces in North America, had ordered to the area between Casco Bay in southwestern Maine and Cape Henlopen on the coast of Delaware. The vessels had two primary objectives: to press men into the British navy (a policy long practiced by the navy and much detested) and to assist the customs officers in the detection of illicit traders. Lieutenant Hill was assigned to the Rhode Island area.⁵⁵

On June 30, 1764, Hill received word that a New York brig, the *Basto*, had arrived from Monte Christo and had unloaded her cargo of ninety-three hogsheads of sugar in a creek, with the intention of fleeing in ballast after the cargo was landed. Hill went to the scene and seized the sugar. Although the *Basto* had fled, Hill pursued and seized it. His action not only angered the *Basto's* master, a Mr. Wingate; Collector Robinson was also incensed.

Robinson's anger was typical of customs collectors who had felt sinned against as a result of new rules giving officers in the navy the authority to assist the customs service. While the rule was intended to relieve overworked customs collectors, they looked upon the assistance of the navy captains as a threat to their own profits from seizures, and their own jurisdiction and powers. Collector Robinson indicated his displeasure with

⁵⁵ Rear Admiral Lord Colvill [*sic*] to Mr. Stephens, Halifax, 26 July, 1764, Bartlett, *Records*, VI. 428.

Lieutenant Hill on July 4 by re-seizing the *Basto* and her cargo of sugar on the pretext that Lieutenant Hill lacked the authority to make the seizure.

In the meantime, Wingate, apprehensive that his vessel would be hauled to Halifax for disposal, had the officer arrested ". . . and obliged [him] to find bail that [the vessel] should be brought to Newport and tried there. . . ." ⁵⁶ Although Hill was convinced that he was authorized to make the seizure, having ". . . taken all the necessary oaths at Halifax. . .," ⁵⁷ he went to Boston anyway to learn the opinion of Surveyor-General John Temple who had jurisdiction over the customs service in Rhode Island.

It was during Hill's absence that the *St. John's* safety was endangered by a group of Newport residents outraged by the continuing practice of impressment. Navy officials were in pursuit of a deserter who had bolted from the schooner. To Newporters the deserter became a local hero. They found and rescued the fugitive before the navy personnel could lay hands on him, and pelted their hero's pursuers with a shower of stones. They also took as hostage a Mr. Doyle, one of the *St. John's* subordinate officers. The *St. John's* people were given the choice of handing over their pilot, or risking the death of Mr. Doyle and the destruction of the *St. John* which the mob threatened to haul on shore and burn. ⁵⁸

⁵⁶ Rear Admiral Lord Colvill [*sic*] to Mr. Stephens, dated at Halifax, 26 July, 1764, Bartlett, *Records*, VI, 428.

⁵⁷ Statement by Hill of the *St. John*, Bartlett, *Records*, VI, 428.

⁵⁸ *Ibid.*, 429.

When the schooner's officers and crew perceived the dangerous situation of their boat, they fired a swivel gun (unshotted) as a warning for their boat to return. Another vessel, the *Squirrel*, was nearby and her commander (Captain Smith) had observed the incident. The impatient Newporters made an unsuccessful attempt to board the *St. John*. In order to save the schooner, Captain Smith of the *Squirrel* offered the assistance of his vessel as protection.

As the *St. John* prepared to lift anchor and sail toward the *Squirrel*, the Newport malcontents sailed their own sloop to Fort George in Newport harbor in order to support the fort's gunner (Daniel Vaughan) who had been given orders to fire upon the *St. John*. His instructions came from two members of the upper house of the colony. Vaughan opened fire upon the *St. John* as the vessel sailed past the fort, en route to sanctuary under the *Squirrel's* colors. The *Squirrel's* lieutenant, Hugh Bachie, went ashore and demanded that the gunner show proof of his authority to fire upon a royal vessel. Rather than heed Bachie's request, Daniel Vaughan and the angry Newport residents knocked Bachie to the ground.⁵⁹

Upon returning to the *Squirrel*, the officer ordered the vessel's broadside turned on Fort George, a threat which proved sufficient to end the resistance of the Newporters. The following day Mr. Doyle, who was still being detained by his colonial captives, was released and returned to the *St. John*.⁶⁰

⁵⁹ Captain Smith to Lord Colvill [sic], *Squirrel*, Rhode Island, 12 July, 1764, extract, Bartlett, *Records*. VI. 429.

⁶⁰ Statement by Hill of the *St. John*, Bartlett, *Records*, VI, 429.

The affair did not end there. A few days later Captain Smith demanded from the governor and council an explanation for the gunner's aggressive behavior. The civil officials' only response was that the gunner had acted on authority and ". . . that they would answer for it, when they thought it necessary."⁶¹ Much had indeed transpired when Lieutenant Hill finally returned to Newport from his visit in Boston with the surveyor-general.

The firing upon the *St. John* was precipitated by several grievances: a charge by the Newporters that a theft had been committed by crewmen from the *St. John*; the presence of a colonial on board the schooner, serving as a pilot; the issue of impressment; the fact that a deserter was being hunted down and forced to remain in the service of a British naval vessel. But the broader issue was the very presence of such royal vessels and their officers --what Stiles had described as a swarm of locusts.

Captain Smith of the *Squirrel* corroborated the strong feelings which Rhode Islanders exhibited toward navy personnel and their vessels. He maintained that the mob had intended to kill the pilot and set fire to the vessel.⁶² For Rhode Islanders, British vessels were a tangible target for commercial dissatisfaction as were those local residents who accepted employment as pilots in the royal navy to guide vessels through the inlets and bays, facilitating

61 Captain Smith to Lord Colvill [*sic*], *Squirrel*, Rhode Island. 12 July, 1764, extract, Bartlett. *Records*, VI, 429.

62 *Ibid.*, 430.

the task of the navy officers and their craft.

In June, 1765, another vessel encountered problems. Captain Charles Antrobus of the *Maidstone* had entered into an agreement with the sheriff of Newport County, stipulating that he would not impress residents of Newport. When he defaulted on his part of the bargain, he touched off a new outburst by the townsmen.⁶³ Governor Samuel Ward complained of the disruptions of normal channels of local commerce, one of the undesirable side effects of Antrobus' impressment policy:

.... the very fishing boats which dally supplied the town, were fired at, and interrupted so much in their fishing, that some of them dared not to go out of the harbor; and the town, if these measures had been continued, would very soon have greatly suffered⁶⁴

Ward noted with disdain that a boat was boarded by crewmen from the *Maidstone* who pressed one of the two men on board. About nine o'clock that evening several hundred people attacked one of the *Maidstone's* boats and dragged it through the town to the commons, where it was burned.⁶⁵

The most memorable attack on a royal vessel in Rhode Island in the 1760's concerned the sloop *Liberty*. It was formerly owned by Boston-merchant John Hancock, but was later seized and refitted as a customhouse boat. Instead of being pursued, the *Liberty* became the pursuer. Her new

⁶³ Lovejoy, *Rhode Island Politics*, p. 38.

⁶⁴ The Governor of Rhode Island to Capt. Charles Antrobus, Newport, 12 July, 1765, Bartlett, *Records*, VI, 446.

⁶⁵ *Newport Mercury*, 10 June, 1765.

captain, William Reid, had built a reputation in Rhode Island for his dogged stalking of almost anything that was floatable or which promised to yield revenue. So notorious was his mercilessness that his cruises had earned him the diminutive, the "Famous Reid." ⁶⁶

In July, 1769, Reid took a Connecticut brig and a sloop, named *Sally*, and hauled them into Newport, because he suspected both vessels of having illicit goods on board. When it was decided that neither vessel had violated the trade laws, Captain Packwood (the owner of the brig) attempted to board his vessel for departure. A sailor from the *Liberty* threatened Packwood with violence. Packwood drew his sword in self-defense; someone aboard the *Liberty* fired shots at him, but he was not hit.

Newporters, angered by the absence of an apology from Captain Reid, decided to administer justice on their own:

... the ensuing evening, having met Capt. Reid on the long wharf, they obliged him to send for his men on shore. In order to discover the man who first fired at Capt. Packwood; upon which Captain Reid sent for all his hands except his mate; afterwards a number of persons, unknown, went on board the *Liberty*, sent the mate away, cut her cables, and let her drive ashore at the point, where they cut away her mast, scuttled her, and carried both of her boats to the upper part of this town and burnt them. ⁶⁷

The Commissioners of Customs in Boston offered a reward of £100 to anyone who could divulge Information leading to convictions. ⁶⁸

⁶⁶ Darius Sessions to Joseph Wanton, 21 March, 1772; William R. Staples, *The Documentary History of the Destruction of the Gaspee* (Providence: Knowles, Vose and Anthony, 1845), p. 3. University Microfilms, American Culture Series, University of Michigan.

⁶⁷ *Newport Mercury*, 29 July, 1769.

⁶⁸ *Ibid.*, 7 August, 1769.

The resentment of Newport's citizens toward Reid had not yet spent itself. When the high tide carried the ruined *Liberty* over to Goat Island, near the spot where the *St. John* had been fired upon, the *Newport Mercury* observed dryly that the vessel was ". . . grounded at the North-End, very near where the pirates were buried. What this prognosticates, we leave to the Determination of Astrologers!"⁶⁹ The following week the boat was ". . . discovered on Fire; and she continued burning for several Days, till almost entirely consumed."⁷⁰

The *Liberty* affair remained for some time the last significant, violent act of protest against the new changes affecting Rhode Island's commerce. But many grievances which led to outbreaks of violence in the colony remained unsolved. The ministry was steadfast in its determination to acquire revenue from colonial trade even though the offensive Townshend duties (except that on tea) were repealed in 1770. Still present was the option of customs officials to use the vice-admiralty court in Boston to avoid the vice-admiralty judge in Rhode Island. The same great numbers of British officials remained. In short, as the new decade began the seeds of discontent planted in the 1760's had not been [removed].

The ability to introduce a new period of peace in Rhode Island in the seventies, rather than to sustain the era of violence which had characterized

⁶⁹ *Ibid.*, 31 July. 1769.

⁷⁰ *Ibid.*, 7 August, 1769.

the sixties, lay in great part with the character of the British officials assigned to Rhode Island's coast. While Rhode Islanders detested Collector Dudley, they saved their choicest epithets for the more visible symbols of oppression--the navy captains who commanded the royal vessels. However not all officers chafed under Rhode Island scurrility. The colony's residents were discriminating enough to commend an estimable fellow when they had the good fortune to spy one.

Such was Captain James Ayscough, commander of the *Swan*. Although he was to be one of the watchdogs of Rhode Island commerce he managed to win the plaudits rather than the condemnation of the local people. He had come to the rescue of a sloop laden with goods and about to capsize from the weight of its load. He used all of his boats and sailors to prevent the accident, a good deed which Rhode Islanders were quick to note. A letter to the editor of the *Newport Mercury* illustrated their indebtedness:

MR. SOUTHWICK,

You are desired by many of your Friends, to Insert, in your next Monday's Paper the following paragraphs.

Sunday, the 8th Instant sailed from hence, on a Cruize, his Majesty's Ship Swan, James Ayscough, Esq; Commander.

We therefore cannot help expressing ourselves in a friendly Manner, regretting much the Absence of so worthy a Neighbour, whose Humanity and Benevolence has been extended to many poor People here; but done in such a private, modest, good-natured, Christian-like Manner, that we really should be ungrateful, were we to omit acknowledging it in your Paper; and we have also experienced many Civilities from his worthy Officers, and jovial Ship's Company.⁷¹

⁷¹ *Ibid.*, 9 November, 1772.

Unfortunately not all British officers earned such respect, although of those who were obnoxious to the local people, some offended more than others. Captain John Linzee of the *Beaver* and Captain Robert Keller of the *Mercury* were not objects of affection in Rhode Island. Several attempts had been made to arrest Keeler for his activities while in service of the customs, but he was too shrewd to come ashore where a high sheriff or a deputy might lay hands on him.

But neither Linzee nor Keeler engendered quite so much revulsion as did Lieutenant William Dudingston of the *Gaspee*. When he initiated his routine service on the Rhode Island station he managed to elicit the deepest contempt which Rhode Islanders could offer. While Captain Ayscough's praises were sung, Lieutenant Dudingston's offenses were [cursed]:

Query: Whether this humane Behaviour [Captain Ayscough's] is not more becoming the Character of a Gentleman, and an Officer, and more pleasing to the World, than the arbitrary, despotic Behavior of a late Commander? who threatened to fire on your Town and Port, and treated your G-----r with all the Contempt and Disrespect imaginable, and afterwards declared openly to many people (though not in the Town, for he knew better) that he should glory to see your Town in Flames: . . . and this very Man was sent to protect you? ⁷²

According to the *Newport Mercury*,² an officer such as Dudingston ". . . when abroad among an unarmed people . . . " was indeed " . . . more imperious and haughty than the Grand Turk himself . . . " ⁷³ It was apparent that Dudingston was confronted with serious problems. As a deputy in the

⁷² *Ibid.*

⁷³ *Ibid.*

customs service assigned to Rhode Island, could he enforce the trade laws to the satisfaction of his superiors, to himself, and simultaneously steer a clear course for himself and his schooner? The answer lay in the protection or vulnerability of the colony's lucrative molasses trade, and whether or not its tradition of violence remained quiescent. How solicitous the merchants of Rhode Island would be in eschewing violence depended upon the extent to which their molasses trade was secure. The behavior of Lieutenant Dudingston was the unpredictable variant.

CHAPTER II

THE TRIBULATIONS OF A NAVY OFFICER: LIEUTENANT DUDINGSTON AND THE *GASPEE*

The broader scheme of revamping the customs service in North America included several new vessels purchased in 1764. Some were owned and operated by the customs house while others were in the possession of the royal navy, although used in the customs service. The sloop *Gaspee* was one such purchase made by Admiral Alexander Colville, commander of naval forces in North America. It was a single-masted sailing vessel which had been built in an American shipyard.¹ Many of the royal vessels in North America bore the names of places along the Gulf of St. Lawrence, the Bay of Fundy, and the Atlantic Ocean, areas patrolled and controlled exclusively by the British since the peace of Paris in 1763. One namesake was the *Gaspee*; others included the *St. John*, the *Halifax*, and the *St. Lawrence*.

The sloop *Gaspee* was originally commanded by Captain Thomas Allen. From the beginning of his appointment in 1764, he was never well liked by Americans engaged in trade. While the nature of his work made him unpopular, his conduct was equally unredeeming. He had encountered

¹ Neil R. Stout, "The Royal Navy In American Waters, 1760-1775" (unpublished Ph.D. dissertation. University of Wisconsin, 1962), p. 343.

his first exposure to colonial resistance at the end of the first year on his new assignment. In the early part of December he anchored at Casco Bay in Maine, his primary mission to refurbish the ranks of the British navy with colonials. Impressment was long familiar to Americans since the British navy was accustomed to supplementing the shortage of British sailors with colonial men.

Allen boarded vessels at random pressing people from Casco Bay. Although he did not harass men on board non-local vessels docked there, his activities were distressing to many of these seamen from Boston and Rhode Island, as accounts in local papers indicated:

Master Allen brought them all too, boarded them, and pressed a number of their Hands, all of which belonged to this Town; one, in particular, was a Mate of one of the Vessels, and another had a Wife and young Children, depending upon the Father's Return to support Them. The Friends of one of the two went down to the Cutter [the *Gaspee*], to plead for the Relief of the poor distressed Men, but all to no Purpose, and meeting with ill Treatment, irritated a Number of hearty Fellows belonging to the Town, who gathered on Saturday morning, and immediately upon Master Allens coming ashore in the Yawl, they seized the Yawl, and carried her to the Top of a high Hill, the Back of the Town, and set a Guard upon her . . . insisted upon his giving immediate Orders to give the poor press'd Men their Liberty, which he promised, upon his Honor he would, upon his going aboard. . . .²

Not trusting the Captain's word, they refused to release him until the sailors were given their freedom. When this was accomplished, true to their own word. Allen's abductors ". . . brought down the Yawl, launch'd her into the Water, and delivered her safe to him not using him in the least rough Manner

² *Providence Gazette*, 22 December, 1764.

during their whole Proceeding" ³

In September, 1768, *Gaspee* received an overhauling and a new commander. With the addition of another mast the armed sloop became an armed schooner. Speed was the principal advantage of the schooner; furthermore, it required only a small crew to man her. In all respects the schooner was the perfect customs vessel, and it remained predominantly the product of the colonial American ports where most of them were constructed.⁴

What she gained in masts, she lost in rank; Captain Allen's replacement was Lieutenant William Dudingston. Although Dudingston and his sloop-turned-schooner brought in seizures in New England, particularly Massachusetts Bay, notoriety resulted from his Delaware-River assignment.⁵ Philadelphians remembered him most from an incident in the summer of 1769, A Chester tavern-keeper named Davis Bevan approached the *Gaspee* in the Delaware and asked permission to speak with the pilot. Dudingston told Bevan that the pilot did not choose to see him or tell him his name. Bevan unadvisedly called Dudingston and the pilot "blackguards." For this error in judgment, Bevan, according to his story, was dragged onto the *Gaspee* where Dudingston was waiting for him.

Captain David Hay of the *Train* happened by in the meantime. He said he could attest to the irascibility of Bevan, identifying him as a

³ *Ibid.*

⁴ Stout, "Royal Navy," p. 343.

⁵ David S. Lovejoy, *Rhode Island Politics*, p. 158.

"...tavern keeper in Chester, a damn'd horse-jockey. They are all a parcel of damn'd rascals." ⁶ As Bevan told it:

The words were no sooner out of Capt. Hay's mouth, than the commander of the schooner struck me in the face with his fist, and redoubled his strokes, which I endeavoured to ward off, without offering to return a blow. But in sending off his strokes, my hand happened to touch his face; on which with an oath, he cried out, "You rascal, will you strike me on board my own vessel?" ⁷

To which Captain Hay replied, "How dare you strike a Captain of a man of war?" A crew member was ordered to hold Bevan while Hay and Dudingston thrashed him. Bevan testified that both men later tried to offer him money as an inducement to forget the incident; instead he initiated a law suit against them. ⁸

If tavern keepers found Dudingston offensive, so much more so did merchants. The time and effort required to protect seized vessels indicated the extent to which Dudingston and his colleagues were disliked. Admiral James Gambier, successor to Admiral Colville, worried about difficulties which Dudingston had experienced with seizures on the Delaware. He wrote to the Lords of the Admiralty in England:

... I received a Letter from Lieutenant Dudingston commanding the Gaspee Schooner at Philadelphia acquainting me that he had deferred sailing until he should receive my further orders, having just made seizure of a large Ship from Ireland with India Muslins and other Commodities on board, the Collector of His Majesty's Customs at that port

⁶ *Newport Mercury*, 17 July, 1769.

⁷ *Ibid.*

⁸ *Ibid.*

representing to him that, as the Seizure was valuable, He did not think it safe unless he remained there until after condemnation, keeping a strong guard on board the Ship until then, and that He could not himself put men on board to take charge of her, as there were but few Custom house Officers . . .⁹

Actually any officer was bound to be unpopular when he brought in vessels with supposed smuggled goods on board. Admiral Gambier recognized the possible danger for officers whose names were too frequently associated with seized vessels. He spoke of the need to alternate the stations of the officers at such time that ". . . the resentment of those concerned in carrying on the said illicit trade . . . " necessitated such a move ". . . to obviate any riots or disturbances . . . " ¹⁰ Dudingston's own transfer to the New-England area in 1772 may have been largely due to his activities in Pennsylvania. A new station would get him away from angered merchants who might want to avenge themselves; and certainly from the Admiralty's point of view, any British officer who was despised by smugglers was an undeniable asset to the royal navy.¹¹

It was clear that Dudingston approached his work with enthusiasm. While on his new assignment he had encountered a sloop which he surmised was carrying smuggled goods from the island of Hispaniola in the West Indies.

⁹ James Gambler to Admiralty, *Salisbury* in Boston Harbour, 6 November, 1770, Public Record Office, Library of Congress Transcript, 1:483.

¹⁰ *Ibid.*

¹¹ The exact date of Dudingston's transfer to the New England area is impossible to determine.

His new superior, Rear Admiral John Montagu, observed that the vessel was

... loaded with Sugar and Molasses, and [had] a light Schooner with her, which gave [Dudingston] reason to suspect she intended running her Cargo for which reason he saw her into Port, and lay by her until the Custom House sent Officers to board her.¹²

Dudingston's fervor was appreciated by his superior. Local merchants considered it a serious threat to their businesses, and felt the need to act on their own to defend their property from confiscation, as one of Dudingston's ardent colleagues soon learned. That officer had dispatched a tender near Martha's Vineyard, to seize a vessel engaged in smuggling. In the evening several armed people in boats, recaptured the seized vessel and imprisoned the officer and crew. Since the number of sailors on any small tender could easily be overcome by several armed local inhabitants, smaller vessels were particularly vulnerable to such attacks. Lieutenant Dudingston tried to overcome the rescuers and to regain the seized vessel, but was unsuccessful. Such activity on his part, although justifiable, was instrumental in making him detested by merchants in Massachusetts Bay who had no more regard and no less hatred for him than their Philadelphia counterparts.

The merchants of Rhode Island were equally familiar with Dudingston. Those who had not been the object of his chase had certainly heard of his behavior from friends and business associates. Before her conversion as a schooner the *Gaspee* had been in Rhode Island waters under the command

¹² Admiral John Montagu's Journal, 21 January, 1772, Papers Relating to the *Gaspee*, compiled by Walter A. Edwards, Rhode Island Historical Society.

of Captain Allen. Rhode Islanders had also read of Dudingston's ferocity in Philadelphia and Chester as it was reported in the *Newport Mercury*.

Nor was Rhode Island new to Dudingston. He had touched there as early as 1770. But when conditions in that colony became so serious that additional men-of-war were thought necessary to stem the illicit trade, Dudingston, in January, was told to station his vessel in Rhode Island until he received further instructions. He was assigned a cutter to assist him in his efforts to help Rhode Islanders reform themselves.¹⁴ With that cruise completed, he was again ordered to the area during February. By early March Rhode Island was virtually a permanent station for Dudingston.¹⁵

He wasted no time carrying out his orders. Dudingston's sole ambition was tracking down ship captains who ran afoul of the trade laws. He was unconcerned about whom he offended, for he stalked the wealthy merchants of Rhode Island as well as the small traders and fishermen. The close alignment of trade and politics in Rhode Island simply compounded the problems which the lieutenant was creating for himself.

Colonial families who had acquired great wealth by the mid-eighteenth century, whether it be from Virginia tobacco, New England trade,

¹³ *Newport Mercury*, 17 July, 1769.

¹⁴ Lieutenant Dudingston to Admiral Montagu, Schooner *Gaspee*, R.I., 22 May, 1772, John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England* (Providence: 1857), VII, 65.

¹⁵ Admiral Montagu's Journal, 19 February, 1772, Edwards, *Gaspee Papers*, Rhode Island Historical Society.

or Philadelphia commerce, were predominantly the same families who held seats in the colonial legislatures. Wealth, respectability, and mercantile connections were as important for office-holding in Rhode Island as elsewhere. But in Rhode Island, these qualifications were not the only criteria. A considerable amount of deference to the electorate by politicians was a unique element in Rhode Island's politics. The annual elections for governor and the semi-annual elections to the General Assembly gave the voters ample opportunity to register their protests or to indicate their satisfactions.

Stalwart political independence in the colony was largely the result of the liberal charter granted in 1663 by Charles II, after his restoration to the English throne. In addition to the immortalized provision for religious freedom, the charter also provided for political freedom to an extent unknown in most of the other colonial charters. The strongest branch of government was the legislature or General Assembly, and so long as its laws did not controvert the laws of England, Rhode Islanders were free to govern themselves. This included choosing their governor who was not, as in almost all of the other colonies, an appointee of the King.¹⁶

Politics in Rhode Island was as fragmented as the name of the colony. The southern towns took their signals from Newport which was controlled by the family of Samuel Ward, who had served three separate terms as governor. Providence was under the influence of Stephen Hopkins, and served

¹⁶ Lovejoy, *Rhode Island Politics*, chap. I, "Rhode Islandism," *passim*.

as the northern capital for those towns which surrounded it. Hopkins was deeply involved in foreign trade and he had also served as governor. Together Newport and Providence, and the Ward-Hopkins factions, waged unending war every six months as they sparred and jostled for control of the colonial legislature. Once every year they donned their armor in the battle for control of the governor's seat.¹⁷ the political war had been waging with vigor since 1760. It had not subsided when William Dudingston made his appearance in Rhode Island waters in 1772.

Although factionalism often literally divided the colony and subordinated higher concerns to selfish interests, family feuding was compensated for by the Rhode Islander's control of his own political fortune and his extensive freedom from crown control. The people's arrogant defense of their independence was at the heart of royal threats to rescind their charter--threats which would frequently be heard as imperial consolidation came to bear more heavily upon the independence of Rhode Island's economy, politics and government.

At the time of Dudingston's indefinite assignment to Rhode Island, the elected chief magistrate of the colony was His Excellency Joseph Wanton Esq., a merchant whose family lineage went almost as far back as the colony's incorporation. The Governor's uncle, John Wanton, and his father, William Wanton, were merchants also. They had made their fortunes in

¹⁷*Ibid.*

commerce before branching out into politics.¹⁸ They had come to know the frustrations of trying to challenge the Ward faction for power in Newport. Although residents of Newport themselves, their desire for political power compelled them to seek accommodation with the Hopkins group of Providence. The alliance of the Wantons and the Hopkins was cemented in the 1750's. The Hopkins family was already allied with another merchant family of Providence, the Browns. The connections of the Hopkins, Browns and Wantons, which were commercial as well as political, soon came to rival the interests in Newport. They managed to capture the governorship in 1769 with William Wanton's son, Joseph, as their candidate.¹⁹ He was a typical Rhode Island leader, having made his fortune in trade and then having gone on to win the governorship of the colony.

Given the political and economic realities of the colony Dudingston was in the unique position of either offending or pleasing both the merchant and ruling class with one stroke, depending upon his particular bent. His first serious confrontation involved a merchant who was a member of the faction currently out of power.²⁰ The firm in question was Jacob Greene and Company of Newport. The vessel in question was the *Fortune* whose master was Rufus Greene, Jr., of East Greenwich. The cargo belonged to Nathaniel

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

Greene of Coventry, and consisted of ". . . twelve hogsheads of West Indian rum . . ." (about 1,400 gallons) along with forty gallons of ". . . 'Jamaica spirits and one hogshead of Brown sugar, all the value of two hundred and ninety five pounds . . ." ²¹

Apparently Dudingston had some intelligence about it. No sooner had the master thrown anchor in Narragansett Bay when he was approached by one of Dudingston's officers, a Mr. Dundas. According to Rufus Greene, Dundas treated him in a contemptible fashion, forcing him into the sloop's cabin and threatening him with a sword. Greene was confined below for some time. After several pleas he was brought up from the cabin and taken before Dudingston on board the *Gaspee*.

Greene asked Dudingston to produce his commission, but the lieutenant denied the request. Only after several more hours of detention on board the *Gaspee* and another vessel, was Rufus Greene finally released. Although Dudingston was confident that the commodities were smuggled, the local press was ambiguous. It mentioned that the *Fortune* was en route ". . . from East Greenwich, in this Colony, to Newport ..." but it did not report where the cargo had originated from or if it had been properly cleared upon entering Rhode Island.²² The *Fortune* and her cargo were duly seized by Dudingston and taken to Boston for condemnation.

²¹ Samuel W. Bryant, "Rhode Island Justice--1772 Vintage," *Rhode Island History*, XXVI, No. 3 (July, 1967). 66.

²² *Providence Gazette*, 1 August, 1772.

By itself the seizure of the *Fortune* was not the catalyst for merchant discontent. The real insult was taking the vessel to the vice-admiralty court in Boston for condemnation. This action was necessary, from Dudingston's point of view, to insure the safety of his seizure. Yet in by-passing Rhode Island's local vice-admiralty court and her local common-law courts (two legal alternatives open to Dudingston) the lieutenant denied the owners of the vessel and cargo the opportunity to recover their losses in their own courts.

The *Fortune* incident, more than any other event, had led concerned merchants to seek remedies to Dudingston's practices. According to one Rhode Islander, a friend of the King, "... meetings were frequently held to consult on the best means to remove this Bar to their illegal Trade . . . " ²³ For the time being, however, a group of merchants from Providence decided to petition the court with a memorial of their grievances against the navy officer.²⁴

The memorial was received by the Supreme Court of Judicature,

²³ [Anonymous] Account of Events Pertaining to Destruction of Schooner Gaspee, n.p., c.1772. John Hay Library, Brown University. The style of writing indicates that the statement may have been penned by Newport Collector of Customs, Charles Dudley. The writer was unmistakably sympathetic to the crown, and Dudley appeared to be the most prolific writer in Rhode Island, espousing the cause of the crown in the *Gaspee* incident.

²⁴ Deposition of Darius Sessions, 12 June, 1773, Gaspee Papers, Rhode Island State Archives. This deposition is also printed in Bartlett's *Records*, VII. 175, although it is misdated. It should read June 12, 1773, not 1772.

Court of Assize and General Gaol Delivery in Providence, presided over by the leader of the Hopkins faction. Chief Justice Stephen Hopkins. Eight prominent merchants, including John and Nicholas Brown and Thomas Greene, had signed their names to the document.²⁵ Complaints were thus being lodged against a British officer, not only by members of the ruling faction (the Brown-Hopkins-Wanton group) but also by members of the out-of-power faction (the Ward-Greene group). Dudingston's behavior would be brought before the ruling faction's patriarch, Chief Justice Stephen Hopkins. Soon the Governor himself would hear of Dudingston's activities. The British officer had indeed succeeded in offending not part but all of the Rhode Island establishment.

Deputy Governor Darius Sessions, as one of the Providence neighbors of the Chief Justice, could easily confer with him when circumstances demanded it. He did just that. Sessions was also aware of the contents of the memorial, having received a similar communication on March 20, 1772 from the petitioners. They asked him to bring the distressing matter to the attention of Governor Wanton in Newport.²⁷ The Deputy Governor lost no

²⁵ The other signatures on the petition were those of Joseph Nightengale, Ambrose Page, Nathan Angell, James Lovett, and Job Smith.

²⁶ Deposition of Darius Sessions, 12 June, 1773, Gaspee Papers, Rhode Island State Archives. [Anonymous] Account of events Pertaining to the Destruction of schooner Gaspee, n.p., c.1772, John Hay Library, Brown University.

²⁷ Depositions of Darius Sessions, 12 June, 1773, Gaspee Papers, Rhode Island State Archives.

time in writing to his Excellency on March 21. The issues which concerned him, essentially narrowed themselves down to: (1) Why was it necessary for the officer in question to conduct himself as though he had a divine calling to single-handedly save the British empire from real and imagined lawbreakers and (2) was he indeed authorized to make such seizures? To the first question Sessions offered these observations:

The inhabitants of this town have of late, been much disquieted in their minds, by repeated advices being brought of a Schooner which for some time past hath cruized in the Narragansett Bay and much disturbed our Navigation. She suffers no vessel to pass, not even packet boats, or others of an inferior kind, without a strict examination, and where any sort of unwillingness is discovered, they are compelled to submit, by an armed force.²⁸

The second question was of greater concern. In a letter to Governor Wanton Sessions stated:

It is suspected that he has no legal authority to justify his conduct, and his commission, if he has any, is some antiquated paper, more of a fiction than any thing else, and this seems to be confirmed by Mr. Thomas Greene, who says he saw it, and believes it to be no other than the commission the famous Reid had, who lost his sloop at Newport, or something else of no validity.²⁹

Wanton was urged to investigate the matter carefully and, should the complaints of the merchants prove well-grounded, to find appropriate means of correcting them.³⁰

²⁸ Darius Sessions to Joseph Wanton, 21 March, 1772, William H. Staples, *The Documentary History of the Destruction of the Gaspee* (Providence: Knowles, Vose and Anthony, 1845), p. 3, University Microfilms, American Culture Series, University of Michigan.

²⁹ *Ibid.*

³⁰ *Ibid.*

As Governor Wanton read the Lieutenant Governor's letter, he could readily empathize with the aggrieved merchants. He knew the name of the officer; that he commanded a schooner; that it was a royal vessel. He had met Dudingston on at least two occasions in the past, once in 1771 and again in 1772. One anonymous writer was convinced that the Governor knew the *Gaspee*

. . . was notoriously the Kings, that she sailed under British Colours, and that the Commander of her (Mr. Dudingston) was well known to the Governor, having as was his Duty waited upon him as Chief Magistrate on his first arrival in the Colony.³¹

But Wanton did not wish to admit to knowing the lieutenant. Instead he addressed his letter to the ". . . Commanding Officer of a Schooner near Brenton's Point." ³²

The Governor chided Dudingston on the manner of his activities and the question of his credentials. He urged the lieutenant to make a visit to Newport immediately with commission in hand, as he should have done initially. Wanton denied ever having seen the commission, and according to Dudingston, the Governor had never asked to examine it.³⁴ To all complaints

³¹ [Anonymous] Account of Events Pertaining to Destruction of schooner Gaspee, Manuscript, n.p., c.1772, John Hay Library, Brown University.

³² Joseph Wanton to the Commanding Officer of a Schooner near Brenton's Point, 22 March, 1772, Staples, *Documentary History*, p. 4, University Microfilms, American Culture Series, University of Michigan.

³³ *Ibid.*

³⁴ William Dudingston to Admiral Montagu, Gaspee, Rhode Island, 22 May, 1772, Staples, *Documentary History*, p. 6, University Microfilms, American Culture Series, University of Michigan.

the lieutenant pleaded innocent:

. . . I have done nothing but what was my duty, and their complaint can only be founded on their Ignorance of that when I waited on you on my arrival I had my Commission to shew you if required--As it was ever understood by all his Majestys Governors, I have had the Honour to wait on, that every officer Commanding one of his Majesty's Vessels were properly Authorised I never produced it unasked for.³⁵

Dudingston sent this reply via one of his officers who had been present for most of the inspections and seizures which had taken place.³⁶ From the officer who brought the proofs of his commission, to the proofs themselves, his Excellency was displeased with the entire response. Careful to make no admission that the officer was authorized to make seizures and that his schooner was a royal vessel. Wanton wrote a reply to ". . . Mr. William Dudingston of the schooner Gaspee ..." demanding that he deliver in person ". . . authentic information ..." concerning his present duties in Rhode Island.

Most significant was the guarantee in the Governor's letter that ". . . my utmost exertions shall not be wanting to protect your Person from any Insult or outrage on coming a shore."³⁷ Apparently Dudingston had

³⁵ William Dudingston to Joseph Wanton, Gaspee, Rhode Island, 23 March, 1772, Staples, *Documentary History*, p. 4, University Microfilms, American Culture Series, University of Michigan.

³⁶ *Ibid.*

³⁷ Joseph Wanton to Mr. W. Dudingston, of the Schooner Gaspee, Newport, Rhode Island, 23 March, 1772, Staples. *Documentary History*, p. 4, University Microfilms, American Culture Series, University of Michigan.

several reasons for remaining on board the *Gaspee*: reluctance to condescend to Wanton, the fear of arrest for the seizures which he had made, and fear that physical harm might befall him. Perhaps the Governor wanted him to come to Newport for the very same reasons: as a matter of principle he would enjoy seeing the young upstart condescend; there were merchants in Rhode Island who were waiting for the opportunity to arrest him for his actions; and finally the Governor likely thought that a bit of "roughing up" would serve the lieutenant well.

Dudingston's refusal to come ashore with his commission was only part of the disagreement. Cooperation between the Governor and the lieutenant reached an impasse over the question of the latter's authority while stationed in Rhode Island. Three proofs had been shown: orders from the Lords of the Admiralty, Rear Admiral Montagu's orders placing Dudingston under his command in North America, and finally a deputation from the Commissioners of Customs at Boston. What then was the objection? According to Dudingston, Wanton wanted to see his actual orders and instructions from the Admiral, and the officer considered this unconscionable!³⁸

Governor Wanton was really questioning the applicability of the orders and deputations. He doubted ". . . the legality of that Authority you have presumed to exercise within this Colony" Wanton found further

³⁸ William Dudingston to Admiral Montagu, Gaspee, Rhode Island, 22 May, 1772, Staples, *Documentary History*, p. 6, University Microfilms, American Culture Series, University of Michigan.

legal sanction for his posture in the opinion of the Chief Justice Hopkins. It had been transmitted to him by the Deputy Governor who wrote:

... no commander of any vessel had any right to use any authority in the Body of the Colony without previously applying to the Governor and showing his warrant for so doing and also being sworn to a due exercise of his warrant for so doing and also being sworn to a due exercise of his office--and this he informs me had been the common custom in this Colony.³⁹

By late March, having settled none of their disagreements, Dudingston decided to refer the matter to Rear Admiral John Montagu, his superior in Boston. In doing so he assured Montagu: "I have done my duty strictly and in the most tender manner [and] I fear not but I shall meet with your approbation."⁴⁰

Regardless of how he viewed his own actions, Rhode Islanders found them anything but "tender." In addition, Dudingston's inaccessibility made his actions that much more irritating to local merchants. He made it known that he planned to take seizures out of the colony by using the district vice-admiralty court at Boston rather than the Rhode Island vice-admiralty court or the colony's common-law courts. This decision was largely responsible for his incurring the hatred of local merchants. No one was more aware of merchants' attitude's than was he.

³⁹ Darius Sessions to Governor Wanton, Providence, 21 March, 1772, Staples, *Documentary History*, p. 3, University Microfilms, American Culture Series, University of Michigan.

⁴⁰ Lieutenant Dudingston to Admiral Montagu, Gaspee, Rhode Island, 24 March, 1772, *Proceedings of the Rhode Island Historical Society, 1890-1891* (Providence: Printed for the Society, 1891), pp. 80-81.

... they talked of fitting, and Arming a Vessel to prevent my carrying any seizures to Boston, two or three writs are now ready to be served on me on that account. Nor dare I send a Boat on shore with safety, every invention of Infamous lies calculated to inflame the Country is put in the News Papers.⁴¹

The seizures which he took to Boston in February emphasized his dilemma. He could not leave the *Fortune* docked at a Rhode Island port since the customs officers could not guarantee its protection. Consequently,

There was only the alternative to send her, or remain in this harbor, and guard twelve hogsheads of rum; a bait, the inhabitants of this government would willingly put in my way, if that could fix the schooner.⁴²

To insure the safety of his crew, his vessel and himself, he had decided to send all seizures to Boston, with the approval and encouragement of the Admiral.⁴³

Dudingston professed bewilderment by the entire development--the problems over his credentials, the charges of his brutality. He was also angered by the Governor's pretending not to know him, and his refusal to acknowledge the *Gaspee* as part of the royal navy, properly commissioned. As Governor of a maritime colony and as a merchant, Wanton could not afford to be ignorant of the Identity of British officers within his colony, or

⁴¹ *Ibid.*

⁴² William Dudingston to Admiral Montagu, Gaspee, Rhode Island, 22 May, 1772, Staples, *Documentary History*, p. 6, University Microfilms, American Culture Series, University of Michigan.

⁴³ Montagu's Journal, 18 May, 1772, Gaspee Papers, Rhode Island Historical Society. Montagu also indicated in this entry the possibility of some harm befalling the *Beaver*.

what kind of men they were, and how much cooperation he could hope to expect from them. He wrote to three of his merchant associates, Nicholas Cooke, and John and Nicholas Brown for this express purpose. Apparently Wanton had surveyed the opinions of some of the officers, hoping to achieve a rapport which would satisfy merchants and British officers alike. After speaking with some of the officers Wanton believed that " . . . regarding the precautions necessary to be taken for the security of the trade, I give it as my opinion that every advantage will be taken [to make seizures] by the two Cruisers now on this Station & all others that may come" ⁴⁴

Despite this apparent lack of cooperation from the navy captains, Wanton found Captain John Linzee, commander of the *Beaver*, a potentially reasonable man, one with whom some understanding might be reached. To his merchant colleagues he wrote:

I have made an acquaintance with Capt. Lindsey [Linzee] and shall nourish it, in order to mitigate the misfortunes if possible of any that may be taken—he seems to be a genteel young man, high spirits, & is said to be a rigid [?] Observer of Order. ⁴⁵

But the Governor saw little forthcoming satisfaction even from a man like Linzee, for ". . . however well dispos'd they may be to indulge, they dare not do it, the Admiral being determined to enrich himself. . . ." ⁴⁶ Governor

⁴⁴ Joseph Wanton to Nicholas Cooke, Nicholas Brown and John Brown, Newport, 4 May, 1772, John Carter Brown Library, Brown University.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

Wanton seemed to be saying that so long as perquisites remained an issue, every opportunity would be used to make seizures and thus enhance the added income of the Admiral and the officers under him.

Governor Wanton had endeavored to make Dudingston's acquaintance as he had with Linzee, or at least to reach some understanding with Dudingston when he first arrived in the colony. As Dudingston recalled it:

What passed between the Governor and me, was, as near as I can recollect, what follows. The morning after my arrival from Boston, was when I first saw him.

Dudingston: Sir, I command His Majesty's Schooner Gaspee and am ordered into this government by Admiral Montagu, to assist the revenue.

Governor: Is it the schooner Capt. Allen commanded? (meaning the Lieutenant I superseded).

Lieutenant: Yes

Governor: We have had many different schooners here lately; (mentioning the Sultana, St. John, and Halifax).

Lieutenant: Yes; and you may remember me here about two years ago, when the Colonels Dalrymple and Robinson came with me. (I am not sure whether he said he did or not).⁴⁷

They talked of other subjects, particularly the problems surrounding the burning of the *Liberty* in 1769. The Governor said that the commander of the *Liberty*, Captain William Reid, and Collector Charles Dudley, had both misrepresented him by suggesting that Rhode Island officials had tacitly urged the residents to destroy the *Liberty*. Dudingston, who lacked sobriety and diplomacy, remarked that on the contrary, he "... had heard it otherwise mentioned. ..." ⁴⁸ With characteristic lack of tact, he quickly added that

⁴⁷ William Dudingston to Admiral Montagu, Gaspee, Rhode Island, 22 May, 1772, Staples, *Documentary History*, p. 6, University Microfilms, American Culture Series, University of Michigan.

⁴⁸ *Ibid.*

he hoped the Governor would cause him " . . . no difficulty in the execution of my duty." ⁴⁹

Dudingston was a literalist. He had trouble reading the thoughts behind the Governor's words, and since Wanton was a master at sophistry, Dudingston tangled himself deeper and deeper into the Governor's snarls. By mentioning the *Liberty*, Wanton had issued a most subtle bit of advice, a warning which completely escaped the youthful officer. The message, construed very simply, was: Search if you must, but be careful how you search, and whom you search. Still the Governor promised to cooperate with the Lieutenant:

Governor: You may depend on my support and assistance.

I then observed, it was not clear to me, if I made a seizure it would be safe.

Governor: I will do all in my power.

I then instanced what had been the fate of one [seizure] made by the port [of Newport] a little before: and added, I did not think if I made one, I should put it to the trial [preferring to take t to Boston instead].⁵⁰

Wanton ignored this remark and simply said, "I suppose you will be much here. I shall always be glad to see you." Dudingston corrected him, "I shall be where I find I can best execute the service." The interaction which had transpired here was partly the result of difference in personality—the Governor a shrewd man, the lieutenant a one-dimensional and righteous man. Both were obstinate men and this contributed to the lack of communication between them. At any rate, Wanton ended with another

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

warning: "I hope. Captain, we shall have a good understanding." Finally compelled to respond forthrightly to the Governor, Dudingston assured him this also ". . . was my wish . . ." and that he hoped to cause ". . . as little trouble as possible" ⁵¹

On two occasions, in March, and again in May, Dudingston had related his dilemma to Admiral Montagu who was in total sympathy with his officer. The Admiral advised Dudingston: "... I recommended his keepg: as much on board while at Rhode Island as possible, & not to take any further Notice of the Governor." Bad advice. indeed! Montagu also counseled the Governor:

. . . It is your duty as a governor, to give him your assistance and not endeavor to distress the King's officers for strictly complying with my orders. I shall give them directions, that, in case they receive any molestation in the execution of their duty, they shall send every man so taken in molesting them, to me.⁵²

Then he issued a warning to those who talked of defying the navy officers with their own armed vessel. If they were apprehended in their villainy he would ". . . hang them as pirates." ⁵³ After threatening the Governor with his plan to send his "Insolent letters" to Secretary of State, Lord Hillsborough, he concluded:

. . . and I would advise you not to send your Sheriff on board the King's

⁵¹ *Ibid.*

⁵² Admiral Montagu to Governor Wanton, 6 [8] April, 1772, Staples, *Documentary History*, p. 5, Bartlett, *Records*, VII, 64.

⁵³ *Ibid.*

ship again, on such ridiculous errands. The Captain and Lieutenants have all my orders to give you assistance whenever you demand it, but further you have no business with them, and, be assured it is not their duty to show you any part of my orders or instructions to them.⁵⁴

With a "poker face" Governor Wanton maintained that he did not know Dudingston, indeed could not know ". . . whether he came hither to protect us from pirates, or was a pirate himself." ⁵⁵ Sardonicly he urged Montagu to discount the false story of the armed schooner and to ". . . not hang any of his Majesty's subjects . . . upon false information." ⁵⁶ As to the Admiral's plan to inform Lord Hillsborough of the insolent letters, Governor Wanton thought it a splendid idea. He agreed that the Secretary of State should be the final arbiter.

What had begun as a hopefully pleasant relationship with the navy officers and the colony's civil magistrates had ended in disappointment. As the Governor had indicated earlier to his merchant friends, he was willing to meet young officers halfway, Dudingston included, but he found himself totally frustrated by the personnel on the Rhode Island station. He would make note in his letter to Hillsborough that ". . . since the *Gaspee* and the *Beaver* have been stationed in this colony, the inhabitants have been insulted without any just cause, with the most abusive and contumelious language. ..." Wanton dismissed the two officers, Linzee and Dudingston, as given to

⁵⁴ *Ibid.*

⁵⁵ Governor Joseph Wanton to Admiral Montagu, Newport, 8 May. 1772, Staples, *Documentary History*, p. 5, University Microfilms, American Culture Series, University of Michigan.

⁵⁶ *Ibid.*

"... prejudice ignorance, of their duty or youthful indiscretion. . . ." ⁵⁷

Based on the lieutenant's earlier performance in Pennsylvania, Wanton's evaluation of him appeared to be accurate. His behavior in Rhode Island was no better. People testified that he had taken poultry, pigs and timber without permission and without paying for them, although he did make subsequent reimbursement in one instance.⁵⁸ Taking his seizure to Boston, which could offer him immunity from Rhode Island wrath, did not endear him to the people either. Given the nature of his personality he would have encountered trouble eventually in Rhode Island. But had he sent no seizure to Boston, had he been less diligent, he might have encountered less trouble less soon. He compounded problems by his inability to tread softly when circumstances demanded that he do so.

Although he cared little about offending prestigious Rhode Island merchants, it was his behavior towards owners of small packet boats engaged in local commerce that most justified the accusation of "blackguard" leveled against him. He erred seriously in his insistence to haul in the smallest craft with the smallest cargo for the minutest offense. Frequently the masters of these vessels had violated no law. By hounding innocent and insignificant packet boats, two unfortunate circumstances resulted. The

⁵⁷ The Governor of Rhode Island to the Earl of Hillsborough, Newport. Rhode Island, 20 May. 1772, Bartlett, *Records*, VII, 65, 68.

⁵⁸ Deposition of Joseph Wanton, Governor of Rhode Island, 25 January, 1773, Gaspee Papers, Rhode Island State Archives, Bartlett, *Records*, VII, 160-161.

lieutenant held up his meaner side for public condemnation, and more importantly, he gave the wealthy traders a pretext for drawing attention away from their own violations, while zeroing in on Dudingston's. He had stirred the waters of the Narragansett, shaking the foundations of local empires along the way. In so doing the prominent families and the political establishment, who were one and the same, had been aroused to seek a decisive solution to their problem.

CHAPTER III

THE GASPEE AFFAIR

Throughout the spring of 1772 Lieutenant William Dudingston and his colleagues greatly disrupted commerce along the once peaceful Narragansett Bay. Governor Wanton fumed that these restraints were placed upon Rhode Island trade and that the local people "... had been insulted without any just cause. . . ." ¹ He bemoaned the fact that trade was interrupted "... in a most unprecedented and oppressive manner. . . . Inward bound vessels have been detained several days, without the least colorable pretext, and then delivered up." ² He mentioned that several people had been detained; one for transporting home-grown tobacco from his residence in South Kingstown to Newport; another for carrying "... only three or four dozen wine laid in by the captain, for sea stores. . . ." ³

That all of these inconveniences were inflicted on the people "... without contributing, in the least, to the service of the revenue [,]" made the situation, in the Governor's opinion, that much more ludicrous. ⁴ He

¹ Governor Joseph Wanton to the Earl of Hillsborough, Newport, 16 June, 1772, John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England* (Providence, 1857), VII, 91.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

characterized the effects of these commercial impingements:

The small freight boats, plying between the several towns, with the produce of the colony, are, by the severity of these officers, subjected to great inconvenience, which very sensibly affects the whole colony; and particularly the town of Newport, its metropolis, whose inhabitants are principally supplied with the necessaries of life by water; and obstructions they now experience, have contributed not a little to enhance the price of fuel and provisions, to the great disadvantage of the town. . . .⁵

Another Newport observer, the Reverend Mr. Stiles, shared the Governor's contempt for the navy officers. He accused them of acting arbitrarily, hounding some merchants while leaving others alone:

They very particularly torment the Sons of Liberty and all who opposed the Antiamerican Measures of the Parliament and Ministry. This Summer Mr. Christopher Ellery's Vessel fell into their hands, a Sailor having a bag of 20 lbs. of Tea, this was the only Thing: He was obliged to go to the Commissioners at Boston and it cost him 60 or 80 Dollars to get her delivered.⁶

Although Dudingston was often the one of whom merchants and traders complained, he apparently made an effort to correct at least one of his misdemeanors. A Mr. Faulkner of Portsmouth, proprietor of Gould Island in the Sakonnet River, rebuked the lieutenant and his crew for chopping down scores of trees upon his property. He later reported being satisfied with the money Dudingston gave him to cover the costs of the timber.⁸

⁵ *Ibid.*

⁶ Franklin Bowditch Dexter, ed.. *The Literary Diary of Ezra Stiles*. (New York: Charles Scribners, 1901). I, 270.

⁷ Deposition of Joseph Wanton, Governor of Rhode Island, 25 January, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII, 160.

⁸ *Ibid.*

Admiral Montagu had sent two other vessels to assist the lieutenant in the surveillance of Rhode Island's waters. After receiving deputations from the Commissioners of Customs on March 17, Captain Charles Inglis of the *Lizard*, a frigate of twenty-eight guns, set out for Rhode Island. The following week Captain John Linzee, commander of the *Beaver*, had also arrived. Together they searched the rivers and inlets looking for the suspected or real smugglers,⁹ finding at times nothing more than the scowls of harassed seamen.

Linzee's zeal frequently matched Dudingston's. On the evening of May 3 he made seizure of seven bags of pimento and three bags of coffee on the sloop *Molly*. According to Linzee, the master, Joshua Blevin, had failed to receive clearance for his cargo upon embarking from Jamaica. The following day, the *Gaspee* seized a sloop in Newport harbor. On May 7, Linzee sent one of his accompanying vessels, the *Pinnace*, to search out the brig *Providence* (Nathaniel Packard, master, Nicholas Cooke, owner). Packard set out from Turks Island, made a local stop in Newport, and was proceeding to his home port, Providence. When searched, this brig yielded twenty-five puncheons of rum from the port of Santa Cruz in the Canary Islands.¹⁰

⁹ Montagu's Journal, Papers Relating to the Gaspee, Compiled by Walter A. Edwards, Rhode Island Historical Society. The February through May entries recount the flurry of activity between the *Gaspee* and the *Beaver*.

¹⁰ Log of the sloop *Beaver*, 7 May, 1772, Edwards, Gaspee Papers, Rhode Island Historical Society.

Although a puncheon varied in amounts, normally it consisted of 111.6 gallons. With the seizure consisting of some 2,790 gallons of rum, this supposed a considerable loss of profit to Cooke. Only three days before the Governor had warned Cooke (and two of the Brown brothers) that leniency would not be shown by the officers on the station.¹¹ The seizure of rum illustrated the point better than any letter could.

Throughout May and early June, *Gaspee* and *Beaver* had cooperated closely in their efforts to carry out their instructions.¹² On Monday, June 8, both vessels were located near Point Judith on Block Island Sound. Having had brief contact that day, the *Beaver* continued on her way in a southwesterly direction, about six leagues (eighteen miles). On Tuesday morning, June 9, at 6:00 a.m., she anchored off the light house near Newport. *Gaspee* and *Beaver* continued in company until noon, when the *Beaver* departed. The following day the *Beaver* was at Gould Island, some distance up the Sakonnet River.¹³

The *Gaspee* continued alone in the Newport area during the noon hour, after which Dudingston planned to weigh anchor for Providence, when

¹¹ Joseph Wanton to Nicholas Cooke, Nicholas Brown and John Brown, Newport, 4 May, 1772, John Carter Brown Library, Brown University.

¹² The Governor of Rhode Island to the Earl of Hillsborough, 20 May, 1772, Bartlett, *Records*, VII, 68.

¹³ Log of the sloop *Beaver*, 9 June, 1772, Edwards, *Gaspee Papers*, Rhode Island Historical Society. William Dickinson Deposition, 12 June. 1772, Public Record Office, Admiral's Dispatches, 1:484, Library of Congress transcript.

he intended to bring on board some seamen from Boston who were waiting in Providence for their new assignment.¹⁴ Another vessel was also preparing to leave Newport at about the same time. It was a small packet, the *Hannah*, Newport owned and operated by the master, Benjamin Lindsey. According to one report the *Hannah* had entered her cargo upon arriving at the customs house in Newport and the office of Collector Charles Dudley had given clearance for the continued voyage to Providence.¹⁵

That afternoon, as both vessels sailed up the Bay, Dudingston signaled the *Hannah's* master to drop anchor. Why he attempted to wave down the *Hannah* is not entirely clear. Perhaps he thought the vessel had not received clearance or had failed to declare some of its cargo. One contemporary explanation recounted that the vessel (erroneously referred to as the *Providence Packet*) had on board a group of sightseers. Lindsey refused to lower his flag when he passed the *Gaspee*. This provoked the lieutenant who fired shots at the vessel. Ignoring the warning shots Lindsey continued to bait Dudingston into pursuing him. Whatever the reasons for Dudingston's anger, the *Hannah* refused to drop anchor when the British officer signaled to

¹⁴ Affidavits of Seamen Bartholomew Cheever, John Johnson, and William Caple, 10 June, 1772, Bartlett, *Records*, VII, 78-79.

¹⁵ *Providence Gazette*, 13 June, 1772.

¹⁶ William Cordon, *A History of the Rise, Progress and Establishment of the Independence of the United States of America Including an Account of the Late War and the Thirteen Colonies from their Origin to that Period* (London, 1788), I, 311.

her captain; a subsequent warning shot was also ignored. Considering Dudingston's loss of temper on other occasions, this slight by Lindsey was probably enough to enrage the lieutenant. He began to resolutely pursue the *Hannah* up the Bay.

As a schooner, *Gaspee* had a distinct advantage of speed over her adversary. Indeed her business was pursuit. The *Hannah's* asset was her maneuverability in waters which were more difficult for a larger vessel to navigate. Although Lindsey was from New York, his frequent voyages to Rhode Island afforded him a familiarity with the Bay, another asset. Dudingston did not know the Bay as Lindsey did. The pilot of the *Gaspee*, Mr. Dagget, was not on board this day.¹⁷ There was apparently no replacement for him, or if there was, he was a disgrace to the other pilots.

If Lindsey's plan was to create a navigational mishap he had the ideal subject to bring the design to fruition. Lack of good judgment was one of the lieutenant's character flaws. Having been pursued some twenty-five miles, the *Hannah* moved into shallow water, careful to avoid the high points which Lindsey knew so well. As Lindsey steered his packet toward the shore, Dudingston followed close behind, unaware of the water's depth. With an abrupt lurch, *Gaspee* ended her chase. She had run aground on a shoal which juts into the Bay; Namquit Point was the place, about six miles below Providence near the town of Warwick.¹⁸

¹⁷ William Dickinson Deposition, 12 June, 1772, Public Record Office, Admiral's Dispatches, 1:484, Library of Congress transcript.

¹⁸ One historian suggested two possible sites for the *Gaspee's* running aground: "One Is Namquit Point or Gaspee Point, about a mile and one half below to hug the west shore of the Bay. About two miles below Namquit Point Is Conimicut Point, which is a long point, extending halfway across the bay, towards Nyatt Point. This point has only six or eight feet of water at high tide and to navigators not familiar with the bay, it could be used by a skilful seaman to lure an unsuspecting pursuer easily to his capture by the sands." However historical records, as contemporary evidence indicates, support the first, Namquit Point. Thomas W. Bicknell. *The History of the State of Rhode Island and Providence Plantations* (New York: The American Historical Society. Inc., 1920), II, 734.

Stunned by the enormity of their present condition, the *Gaspee's* crew disembarked from the schooner and surveyed the situation with dismay as the *Hannah* continued up the Bay toward Providence. It was about 2:00 or 3:00 p.m. and the level of the water, at low tide, was about a foot on one side of the vessel, and two feet on the other, making it possible for the crew to walk around her. Dudingston made the most of his dilemma by ordering the crew to scrape the schooner's bottom of barnacles. An anchor was used in an attempt to dislodge the vessel, but the low tide and the presence of only sixteen or seventeen crew members, including Dudingston, made this impossible. They ceased their efforts at about sunset (8:00 p.m.) having toiled since they ran aground, some five or six hours before. One of the crew, Patrick Earl, along with two others, served sentry duty while the remaining dozen or so retired for the evening.¹⁹

¹⁹ Of the sixteen or seventeen crew members on board the names of the following are known: Midshipman William Dickinson, Boatswain's mate, John Johnson, Patrick Earl, William J. Caple, Peter May and Seamen Bartholomew Cheever, Thomas Parr, Edward Pullibeck, Joseph Bowman, Patrick Whaler, and Patrick Reynolds. Darius Sessions to Governor Wanton, Providence, 18 January, 1773, William R. Staples, *The Documentary History of the Destruction of the Gaspee* (Providence: Knowles, Vose and Anthony, 1845). p. 41. Deposition of Peter May, 19 January, 1773, Bartlett, Records, VII, 152. *Massachusetts Gazette and Boston News Letter*, 18 June, 1772.

William Dudingston must have had a fitful night when he finally extinguished his lamp. Much had transpired since he had left his colleague, Linzee, at noon time. The *Beaver* was located at Sakonnet River—the *Gaspee* at Namquit Point; Portsmouth, Rhode Island, lay in between. Consequently, Dudingston could expect no assistance from Linzee. He would have to wait for high water, about 3:00 a.m. next morning, when, with some nautical expertise, *Gaspee* would hopefully be under sail once again. Until that time there was much to be anxious about. What, for instance, had happened to the master of the *Hannah*? Once he arrived in Providence, what would his next move be? Such an occurrence as the grounding of a royal schooner, especially the *Gaspee*, would not go unnoticed. Dudingston did not have to labor at frightful images. For instance, he himself had suggested to Admiral Montagu that there were merchants from Providence and Newport who would like nothing better than to have access to his vessel—people who longed to "... fix the schooner. . .," as he put it.

Disposing of bothersome British officers and their vessels was not unique in Rhode Island's past. Only three years before the sloop *Liberty* had been eliminated by angry Newporters. In July of that year, 1769, a letter to the editor of the Newport paper indicated that the captain of the *Liberty*, William Reid, had never bothered to produce his commission when the

Governor requested it.²⁰ The fact that Lieutenant Dudingston was being accused of the very same sin, and the fact that he had engaged, according to Rhode Islanders, in the same high-handed behavior as Reid, convinced some of the merchants of Providence, as it had those residents of Newport, that Dudingston was deserving of no less than the *Liberty's* captain.

The analogies which one could draw between Reid and Dudingston, *Liberty* and *Gaspee*, were weirdly coincidental. Reid had irritated Rhode Island commerce, particularly in and around Newport; Dudingston cruised in the same area although he angered Providence's merchants more so. Reid's commission had been called into question by Rhode Island authorities; the same suspicions were raised about Dudingston's. In fact, it was Deputy Governor Darius Sessions who, in March, had suggested that both men had used the very same commission.²¹ What was to stop the injured parties of Providence from doing the same to *Gaspee* and her commander, that Newport people had done to *Liberty*?

Predictably, Benjamin Lindsey made haste to Providence where he

²⁰ *Newport Mercury*, 29 July, 1769.

²¹ Darius Sessions to Governor Wanton, Providence, 21 March, 1772, Staples, *Documentary History*, p. 3. University Microfilms, American Culture Series, University of Michigan.

²² Benjamin Lindsey and his brother Thomas have both been claimed as the master of the Hannah. According to eyewitness Ephraim Bowen, Thomas was the real master. However, William Staples makes the assertion that Benjamin was. Reliability probably rests more with Staples, and Benjamin Lindsey, since Bartlett's *Records* are strewn with modernized spellings, deleted phrases, and incorrect titles. There are other indications that Benjamin was the master. In 1775 the New York merchants, Wood & Alsop, requested a favor of Moses Brown in behalf of Benjamin Lindsey, who was suffering from financial difficulty. The letter was written to Brown with the suggestion that he could vouch for Benjamin. It further suggests the frequent contact which he must have had with the Brown brothers. Finally, another eyewitness to the affair, John Howland, maintained that this was one of the facts on which Bowen erred—that the Lindsey who mastered the Hannah was Benjamin and not Thomas. Wood & Alsop to Moses Brown, 10 June, 1775, Moses Brown Papers, II, 34, Rhode Island Historical Society.

visited at sundown with one of the town's most distinguished and prominent citizens and merchants, John Brown,²³ one of the five sons of Captain James Brown. The Brown family, whose American origins dated back to the mid-seventeenth century, had come to share some of the political control in the Hopkins-dominated port of Providence. It was to this coalition of political strength that Joseph Wanton had attached himself when he decided to gamble in the political arena. As the Hopkins, Greenes, and Wards had done, the Browns came to enjoy their political hegemony through their proven successes as traders and merchants. Sometime after the death of Captain Brown in 1739, his remaining four sons (the oldest having died in 1750) pooled their resources with their uncle, Obadiah, who had no living sons of his own. Together the extent of their business had come to rival those of the other great mercantile families in the British-American colonies.²⁴

²³ Ephraim Bowen Deposition, 29 August, 1839, Staples, *Documentary History*, p. 8. University Microfilms, American Culture Series, University of Michigan.

²⁴ James B. Hedges. *The Browns of Providence Plantations, Vol. I: Colonial Years* (Providence: Brown University Press, 1968), p. 10. Hereinafter referred to as *Browns*.

In addition to Brown's preeminence as merchant and distinguished citizen, he was one of the people who stood to lose a great deal by Dudingston's efficient patrol. Brown had a special interest in the foreign trade, his primary means of livelihood and profit. His business associate and political henchman, Governor Wanton, had indicated as much when he wrote to Moses and John Brown of the futility of their expecting any leniency from Dudingston. Lindsey's seeking John Brown on this occasion was understandable.

When Lindsey told Brown of the *Gaspee's* whereabouts the merchant must have been overjoyed. The grounding of the schooner could not have been more auspicious had it been planned. The *Gaspee* was very accessible in her present location, and low tide assured her captivity for the next several hours. Lindsey and Brown probably knew that the *Beaver* was too far away to be of any service to the *Gaspee*. It was the total isolation of Dudingston, crew and vessel which made the *Gaspee* predicament too tempting to ignore.

These factors doubtless led Brown to suggest destroying the *Gaspee*. Finding enough people to assist in the execution of this objective was apparently no problem; many merchants, traders and farmers had been personally affected by Dudingston's behavior or had known friends and associates who were the objects of his searches. To summon these numerous sympathizers, someone, perhaps Brown, engaged a young boy named Daniel Pearce, to beat a drum through the streets.²⁵ Daniel marched some distance

²⁵ Ephraim Bowen Deposition, Rhode Island Historical Society Manuscripts, Vol. X, 124a. On the back of this manuscript, John Howland gave his version of the events leading up to the burning of the *Gaspee*. He also identified the drummer boy as Daniel Pearce.

from South Main Street by the harbor, up toward the Square, and back again. He was joined by three or four other boys his age.²⁶ Several people in Providence were attracted to their windows by the beating drums, among them a group of attorneys celebrating at a local tavern owned by James Sabin. Deputy Governor Darius Sessions was at home when he heard the cadence in the street.²⁷

One local observer noted that after a large group had assembled ". . . many Persons were called upon and invited in a more particular Manner to engage in the design."²⁸ This special group convened at James Sabin's Inn. The details of their plan were presumably agreed upon at this time. Eight five-oared long boats, each headed by a captain, would be employed. The boats would proceed in orderly fashion down the river into the Harbor and out to the Bay, hopefully reaching Namquit Point before the tide could lift the *Gaspee* on its way.²⁹ They lost no time in beginning their preparations.

²⁶ *Ibid.*

²⁷ Darius Sessions Deposition, 9 January, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII, 128. John Cole to the Commissioners, 20 January, 1773, Deposition of John Cole, 3 June, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII, 158, 170.

²⁸ [Anonymous] Account of Events Pertaining to Destruction of schooner Gaspee, Manuscript, n.p., c.1772, John Hay Library, Brown University.

²⁹ Ephraim Bowen Deposition, 29 August, 1839, Staples, *Documentary History*, p. 8. University Microfilms, American Culture Series, University of Michigan.

The long boats were assembled at Fenner's wharf, directly across the street from Sabin's, where several of the men had now gone to muffle the oars and rowlocks, so as not to make their presence known.

One of the men chosen to act as captain was Abraham Whipple, aged thirty-nine. Whipple was a superior seaman employed by the Browns. His occupation involved him deeply in the West-Indian molasses trade. He was also associated with the Hopkins family through his marriage to Sarah Hopkins, the sister of the Chief Justice.³⁰ Although there would be a sea captain piloting and directing each of the eight boats, Whipple was chosen to co-direct the enterprise with Brown for several probable reasons: he worked for him; he was an experienced seaman; and because of the respect he enjoyed in his own right in the community. Brown probably chose him to supervise the preparations of the long boats while he was busy elsewhere--perhaps briefing the other captains at the inn on the specifics of their venture.

John Hopkins, a nephew of the Chief Justice, was a captain also. Through marriage he was related to Whipple. A third was Captain Samuel Dunn.³¹ Of the other five captains, the name of only one is known for

³⁰ Bernhard Knollenberg, ed., *Correspondence of Governor Samuel Ward, May, 1775-March, 1776 and Genealogy of the Ward Family* (Providence: Rhode Island Historical Society, 1952), n. 21, p. 31. William E. Foster, "Stephen Hopkins, a Rhode Island Statesman," part II. p. 94, in *Rhode Island Historical Tracts* (Providence: 1877-1896).

³¹ Ephraim Bowen Deposition, 29 August, 1839, Staples, *Documentary History*, p. 8. John Howland account on the back of Ephraim Bowen Deposition, Rhode Island Historical Society Manuscripts, X, 124a.

certain: Simeon Potter, aged fifty-two, a talented seaman like Whipple, an adept privateer, and a proprietor of a Bristol ropewalk. He was the only major participant from Bristol, although several men from that town assisted him. Bristol and Providence are roughly the same distance from Namquit Point which lies between them. Although Bristol people were too far down the Bay to respond to Daniel Peerce's drum beat. Potter may have witnessed the *Gaspee's* grounding.

Aside from the eight captains and John Brown, there were about fifty-five others who participated.³³ Two of the men were Captain Joseph Tillinghast and his friend. Dr. John Mawney, with whom he lived in Cranston. Mawney had been described in one account as a medical student, as a skilled surgeon in another. His training was necessary should any of the participants suffer physical injury. Ephraim Bowen was also involved. He was

³² Deposition of Aaron Brings, 14 January. 1772, Deposition of Patrick Earl, 16 January, 1773, Bartlett, *Records*. VII, 137-38, 142.

³³ *Massachusetts Gazette and Boston News Letter*, 18 June, 1772. Staples, *Documentary History*, pp. 55-56. University Microfilms, American Culture Series, University of Michigan. Ephraim Bowen estimated the number at about five hundred strong. More modest estimates place the figure at roughly 150, Another contemporary account .speaks of sixty-four men. While all three figures are, of course, arbitrary, the third appears to be the most reasonable.

³⁴ The attackers may have planned on killing Dudingston. Whipple threatened to kill him when he came on deck. He was heard to say, "... stand aside and let me dispatch the Piratical Dog, he then lifted a hand spike over Mr, Dudinston [sic] head. ..." However, the presence of a surgeon suggests that in addition to treating any of the casualties which might befall the Providence group, there might also have been medical aid available for the crew members. It was not necessary for them to kill Dudingston in order to teach him a lesson. Deposition of William Dickinson, 12 June, 1772, Public Record Office, Admiral's Dispatches 1:484, Library of Congress transcript.

about nineteen years old at the time. He embarked in Captain John Hopkins' boat. Bowen was accompanied by his friend, Joseph Bucklin, an innkeeper. There were also lesser luminaries who went along: Paul Allen, Benjamin Hammond, Justin Jacobs, John J. Kilton and Simeon Olney, all residents of Providence.³⁵

The known names of those who participated are admittedly sparse. While some sixty-four people were involved, about three-fourths of them remain unknown. Yet one can speculate as to who some of the others were. Nathanael Greene was allegedly one of the people gathered at Sabin's, but his biographer (George Washington Greene on the word of Ephraim Bowen) denies this. Three Greenes had been involved with the *Fortune*, the packet which Dudingston hauled to Boston. Nathanael, the owner of the rum on board the packet, had a good reason for seeking revenge. The owner of the *Fortune*, Jacob Greene, had better reason. The Greene with the best reason of all was

³⁵ Noah J. Arnold, "The Valley of the Pawtuxet: Its History and Development," *The Narragansett Historical Register* Vol. VI. No. 3 (1888), 229. Arnold mentions the involvement of John L. Kilton, but his facts must be used advisedly. He also dated the Gaspee affair as 1775.

³⁶ George Washington Greene, *The Life of Nathanael Greene: Major General in the Army of the Revolution* (New York: G. P. Putnam & Son, 1867), Vol. I, n., 42-43.

the master of the vessel; he was Rufus Greene, Jr., who had been manhandled and treated most indignantly by Dudingston and his crew.³⁷

Almost any small or large merchant, almost any master of a packet or little vessel, could have been an eager participant. Any one of the merchants who signed the March memorial to Darius Sessions may have been involved. John Brown was one of those petitioners. The others were Joseph Nightengale, Thomas Greene, Ambrose Page, Nathan Angell, James Lovett, Job Smith, and Nicholas Brown.³⁸

The majority of the people embarked in boats from Fenner's wharf in Providence, planning to meet up with the others from Bristol and Cranston down the Bay. All of the men were armed with " . . staves and paving stones . . ." which they had gathered before setting sail. A good number also possessed firearms. The drummer and his companions probably watched with interest from the pier, as the boats weighed down the river in single file about 10:00 p.m.³⁹ When they reached the mouth of the river Whipple ordered the other captains to form rank from right to left so that they might sail abreast down the Bay.⁴⁰

³⁷ Deposition of Peter May, 19 January, 1773, Bartlett, *Records*, VII, p. 152.

³⁸ Deposition of Darius Sessions, 12 June. 1773. Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII, 175.

³⁹ Statement of Dr. John Mawney, Bartlett, *Records*, VII. 74-75. John Howland Account. Rhode Island Historical Society Manuscripts, Vol. X, 124a, Rhode Island Historical Society.

⁴⁰ John Howland Account, Rhode Island Historical Society Manuscripts, Vol. X, 124a, Rhode Island Historical Society, Ephraim Bowen Deposition, 29 August, 1839, Staples, *Documentary History*, p. 8, University Microfilms, American Culture Series, University of Michigan.

The captains had a difficult chore to perform, as there was no moon, making navigation troublesome. But the would-be attackers were shrouded in darkness. They approached the schooner at about 12:45 a.m. The one or two feet of low water which surrounded the vessel at 3:00 p.m. when she grounded, had increased as high tide approached. The tide takes approximately twelve hours and twenty-five minutes to turn, which would place high tide in the vicinity of 3:00 or 4:00 a.m. At about 1:00 a.m., the *Gaspee*, although relatively buoyant, was in no position as yet to dislodge herself.⁴²

The sentinels who kept watch were suddenly aware of some stirring in the Bay several feet from them. Bartholomew Cheever, a seaman who had just come on sentry duty, inquired who was out there. His second request went unheeded as the raiders remained quite still, the only noise coming from small ripples in the water, as their boats edged closer to the schooner. Cheever called to Dudingston, although the disturbance had already attracted the lieutenant. Coming on deck in his nightshirt he asked who was there and what was their business. He inquired once again, but there was no answer.

⁴¹ Deposition of Bartholomew Cheever, 1 June, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII, 170. Staples, *Documentary History*, p. 45, University Microfilms, American Culture Series, University of Michigan.

⁴² [Anonymous] Account of Events Pertaining to Destruction of schooner Gaspee, n.p., c.1772. John Hay Library, Brown University.

Dudingston perceived that his schooner was surrounded by several boats filled with armed men. He ordered them to keep off or he would have to fire upon them.⁴³

John Brown was seated next to Abraham Whipple in one of the long boats. One of them, probably Brown, shouted back to Dudingston, "I am the sheriff of the country [should read "county"] of Kent, G--d D--n you, I have got a warrant to apprehend you, G--d D--n you; so surrender, G--d D--n you."⁴⁴ Another man shouted, "Damn your blood, we have you now." Dudingston replied that he could not permit the sheriff to come on board at that hour of the morning. This response much angered the men in the boats who "... set up a halloo, and rowed as fast as they could, towards the vessel's bows."⁴⁵ The proximity of the Providence party was such that *Gaspee's* large guns were of no use in repulsing the men, since the attackers were below the vessel and out of range of its guns. The few crew members on board were ordered to take up

⁴³ Deposition of Bartholomew Cheever, 1 June, 1773, Gaspee Papers, Rhode Island State Archives.

⁴⁴ Deposition of William Dickinson, 1 June, 1773, Bartlett, *Records*, VII, 168-69. Although Bowen attributed this statement to Abraham Whipple, physical descriptions of the man referred to as the sheriff suggest that John Brown made the statement. Since he was more than likely seated next to Whipple, Bowen could have easily confused the two men in the dark. The passage of years may have dimmed his recollection.

⁴⁵ William Dudingston to John Montagu, Pawtuxet, 12 June, 1772, Deposition of John Johnson and William J. Caple, 10 June, 1772, Deposition of Bartholomew Cheever, 10 June, 1772. Bartlett, *Records*, VII, 78, 79, 86. Ephraim Bowen Deposition, 29 August, 1839, Staples, *Documentary History*, p. 8, University Microfilms, American Culture Series, University of Michigan.

their small arms and to fire at anyone who attempted to come on deck.⁴⁶

By now men were shimmying up the sides of the vessel. Dudingston was overwhelmed; he successfully fought off one man with his sword to keep him from coming on deck, with the other hand firing a shot almost simultaneously at the men in the boats.⁴⁷ The four crewmen on board gave him little assistance. He urged the others below deck to forget about what clothes to put on and to come up immediately. Suddenly, Joseph Bucklin, the innkeeper seated in Hopkin's boat, leaned toward Bowen and exclaimed, "Ephe, reach me your gun and I can kill that fellow."⁴⁹ Bucklin delivered a shot which was intended to be mortal. The bullet entered Dudingston's left arm, which was by his side—broke the arm, pierced it through and lodged in his groin. As he fell back to the deck Bucklin shouted, "I have killed the rascal."⁵⁰

⁴⁶ William Dudingston to John Montagu, Pawtuxet, 12 June, 1772, Bartlett, *Records*, VII, 86.

⁴⁷ Deposition of Peter May, 19 January, 1773, Bartlett, *Records*, VII, 151, *Massachusetts Gazette and Boston News Letter*, 18 June, 1772. Deposition of Dickinson, 12 June, 1772, Public Record Office, Admiral's Dispatches, 1:484, Library of Congress transcript.

⁴⁸ Gaspee Documents," *Proceedings of the Rhode Island Historical Society* (1890-1891), p. 91.

⁴⁹ Ephraim Bowen Deposition, 29 August, 1839, Staples, *Documentary History*, p. 8, University Microfilms, American Culture Series, University of Michigan.

⁵⁰ Ephraim Bowen Deposition, 29 August 1839, Staples, *Documentary History*, p. 8. "Gaspee Documents," *Proceedings of the Rhode Island Historical Society* (1890-1891), p. 91. Deputy Governor Sessions to the Governor of Rhode Island, Providence, 11 June, 1772, Bartlett, *Records*, VII, 77-78.

Bucklin's success, the darkness, and the mad scramble to come on deck must have created a picture of unbridled pandemonium. People who had been briefed very likely forgot or confused their duties. When the "sheriff" (Brown) gave orders, however, everyone obeyed.⁵¹ He was the first on deck, and he probably rushed to Dudingston's side to see if his wounds were mortal. Dr. John Mawney was the first from his boat to board. Several people broke open the arms chest and snatched cutlasses for themselves. Someone else tried to enter the deck by climbing the windlass, a device used for lifting weights. Mawney saw him struggling. Mistaking him for a crew member from the *Gaspee* in flight, the doctor would have delivered a substantial blow with his stave had not the potential victim called him by his Christian name: "John, don't strike." The doctor lowered his club when he recognized the voice to be that of Captain Samuel Dunn.⁵²

Samuel Dunn had escaped the punishment intended for others more deserving than he. John Johnson was one of the sleepy crew coming up on deck, only to receive several blows with a stick as he popped his head through the hatchway. Peter May may have landed on Johnson as he was thrown down the steps. Patrick Earle fared no better; this sentry was knocked about with a club, whereupon he was thrown into the hold below deck, sharing his cramped

⁵¹ William Dudingston to John Montagu, Pawtuxet, 12 June, 1772, Bartlett, *Records*, VII, 86.

⁵² Statement of Dr. John Mawney, Deposition of Patrick Earle, 16 January, 1773, Bartlett, *Records*, VII, 74-75, 142. Gordon, *History*, I, 312.

quarter with the schooner's cargo.⁵³ Although some crew members had been maltreated arbitrarily, the attackers had specific targets in mind. In addition to William Dudingston, they were interested in the *Gaspee's* pilot, Mr. Dagget. As with most pilots he was probably a resident of Rhode Island who, in choosing to navigate the adversary through inlets and bays, had earned the disdain usually accorded a horse thief. A crewmember told the inquisitors that Dagget was no longer on board the *Gaspee*, an advantage which the pilot could only have considered a godsend.⁵⁴

The attackers then turned to the crew. Dudingston was ordered to tell his men to surrender, in exchange for a promise from Brown and Whipple that no harm would befall any of them. Although it was a difficult order to heed, the lieutenant complied with their wishes. The crew was sent below deck, brought up individually, pinioned, and put into boats. During all this time, according to the lieutenant's account written later, he was left to bleed profusely on deck, his attackers finding it difficult to pity him even in his painful circumstances. Captain Whipple finally got around to hearing Dudingston's pleas for medical aid. With little mercy he ordered Dudingston to his knees and made

⁵³ Deposition of Patrick Earle, 16 January, 1773, Deposition of Peter May, 19 January, 1773. Bartlett, *Records*, VII, 142. 152.

⁵⁴ Deposition of William Dickinson, 12 June, 1772. Public Records Office, Admiral's Dispatches. 1:484, Library of Congress transcripts.

him beg his life. The severity of his injuries induced him to attempt this humiliating feat, although he pleaded that his assassins either permit him to seek out a physician, or to tend his wounds themselves. Whipple's response was, "Damn your blood, you are shot by your own people."⁵⁵ Finally Whipple consented to lend the officer medical assistance. Midshipman William Dickinson was untied and was permitted to carry his commander below deck to the cabin.⁵⁶

Dr. Mawney and Dudingston's assassin, Joseph Bucklin, were sent below by Brown.⁵⁷ They found the lieutenant seated even though he was bleeding a great deal. Mawney judged that a femur artery had been severed. Since his purpose was to curtail the bleeding as speedily as possible, he took his own shirt and made bandages with it. The patient said, "Pray Sir, don't tear your clothes; there is linen in that trunk. ..." Bucklin went to the chest, removed the linens, and scraped them to produce lint for the dressing. The newness of the fabric made this impossible. Instead Mawney attempted to stop the flow of blood by applying a tourniquet.⁵⁸

There were more than a dozen people in the cabin, most of them

⁵⁵ Deposition of John Johnson and William J. Caple, 10 June, 1772, Deposition of William Dickinson, 1 June, 1773, Bartlett *Records*, VII, 79, 168.

⁵⁶ Gaspee Documents," *Proceedings of the Rhode Island Historical Society* (1890-1891), pp. 91-92.

⁵⁷ Statement of Dr. John Mawney, Bartlett, *Records*, VII, 75.

⁵⁸ *Ibid.*

from the raiding party, Dudingston was seated with Midshipman Dickinson standing by him, while Mawney and Bucklin ministered to his wounds. The Midshipman was percipient. He watched the "surgeons" intently. As Bucklin made the scrape lint, Dickinson noted that he was a rather young man, about eighteen years old, five feet six inches or so, and pock-marked. The surgeon was a "genteel" looking man, around twenty-two years old, about an inch or so taller than Bucklin.

Dickinson turned his attention to the two principles, whom the others referred to as the captain and the sheriff. These men were not ruffraff or "jack tars." The one who called himself the head sheriff was a tall, refined man dressed in blue with his hair tied behind his back in the common style. His ruffled shirt told much about his economic status. The "captain" had a "hoarse voice," and his swarthy complexion and robust build betrayed the many hours he had spent on voyages to far-off ports. He took this captain, Abraham Whipple, to be a man of considerable means, ". . . rather above the common rank of mankind . . ." but certainly lacking the refinement of the sheriff. Dickinson concluded that ". . . the greater part of those . . . on board the schooner, and in the cabin, were persons well dressed; many of them with ruffled shirts, and appeared as store-keepers, merchants or masters of vessels." ⁵⁹ Many of those on board had masqueraded as Indians and Blacks. ⁶⁰

⁵⁹ Deposition of William Dickinson, 1 June, 1773, Bartlett, *Records*, VII, 168.

⁶⁰ A reference to "indians" is found In "A New Song Called the Gaspee," Staples, *Documentary History*, pp. 55-56, University Microfilms. American Culture Series, University of Michigan. Dickinson referred to several Blacks being on board. Deposition of William Dickinson, 1 June, 1773, Bartlett, *Records*, VII. 168.

Mawney felt pressed for time. He had to stop the flow of blood before it proved fatal to his patient, and he had also to contend with the ruffians outside the cabin door who frequently, during his medical procedures, were urging him to hurry up.⁶¹ Mawney was also compelled to abide the comments from the two leaders who baited Dudingston.

The nature of the questions they put to the lieutenant betrayed their purpose in boarding the *Gaspee*. He was commanded to produce his commission and instructions. He ordered his midshipman to hand over these papers. The deputation of the Commissioners of Customs, the commission from the Lords of the Admiralty, and the instructions from Admiral Montagu were among them. Much to the annoyance of Brown and Whipple, Dudingston began to enumerate each one, explaining their contents. According to Dickinson, "... they damned him, and told him they did not come to receive any instructions from him, but would examine the papers at their leisure, which they put into their pockets, ..." ⁶²

The men waiting impatiently at the cabin door were permitted to enter after the bandages had been set. They swiftly alighted upon some

⁶¹ Statement of Dr. John Mawney, Bartlett, *Records*, VII, 75.

⁶² Deposition of William Dickinson, 1 June, 1773, Bartlett. *Records*, VII, 168.

bottles in the cabin. Mawney, unlike many of the others, had remembered to put on his boots, and proceeded to crush the bottles under foot.⁶³ Whipple passed over these in favor of Dudingston's silver wine goblet which he filched for himself. He would have the following engraving added to its base, a few days later: "Captured by Com. Whipple of R.I. from the British sloop Gaspee, June 17, 1772."⁶⁴

While most of the raiders from Providence had been pilfering and breaking bottles, Dudingston was transported to the deck. Midshipman Dickinson remained in the cabin with Brown and Whipple, perhaps feeling a sense of responsibility to assume leadership since his commander was seriously wounded. He was given the choice of either quitting the vessel voluntarily or being thrown overboard. Dickinson finally joined Dudingston on deck, where the sight of the pinioned crew--some with cuts and bruises--was more than the commander could tolerate. He was likely convinced that neither Whipple nor Brown's word was worth much. Earlier they had promised him that his crew would not be harmed, but he must have thought the worst when he saw them loaded into two boats for some unknown destination.

How to dispose of the crew had created some disagreements initially. A number of the attackers would naturally have liked to have seen

⁶³ Statement of Dr. John Mawney, Bartlett, *Records*, VII, 75.

⁶⁴ *Rhode Island History*, Vol. X, No. 4 (1951), Frontispiece.

Dudingston and Dagget, specifically, taken care of. Others were more sympathetic. Patrick Earl, the sentry, overheard one man say that the crew was blameless and it was best to set them on shore. They were finally placed in two separate boats and transported to a point on shore where they were left to fend for themselves.⁶⁵ Dudingston was thankful that the mob had not taken his money, although his clothes and the schooner's journal had been thrown overboard into the water or into one of the boats.⁶⁶

As he was being carried on board a boat several men demanded to know if he planned to make good for the rum he had seized from the Greenes. He was told that if he did, his vessel would be spared. According to one crewmember of the *Gaspee* (Peter May), a man named Greene was the most persistent of those demanding a reply. May contended that he had been in the *Gaspee* cabin the day after the *Fortune* was seized.⁶⁷ He was referring to Rufus Greene, Jr., the master, who had been taken on board the *Gaspee* for questioning. Whipple reminded Dudingston as his boat pushed off, that if he did not pay for the rum none of his personal possessions would be saved. Dudingston promised to make any adjustments that a court of law would demand

⁶⁵ Deposition of Patrick Earle, 16 January, 1773, William Dudingston to John Montagu, 12 June, 1772, Bartlett, *Records*, VII, 141, 87.

⁶⁶ William Dudingston to John Montagu, 12 June, 1772, Bartlett, *Records*, VII, 87.

⁶⁷ Deposition of Peter May, 19 January, 1773, Bartlett, *Records*, VII, 151.

⁶⁸ William Dudingston to John Montagu, 12 June, 1772, Bartlett, *Records*, VII, p. 87.

of him.

The long boat which took the navy officer to the mainland also carried five of his crew and some members of the raiding party. Another boat, with the remainder of the crew, followed behind. The crew's hands were still pinioned as protection for their captors. However, Patrick Earle managed to free his. He was chilled from the morning temperatures on the Bay and asked if he could row to warm himself. He received permission and an unexpected wad of chewing tobacco. Despite the blackened faces of some of the men, Earle was convinced that the man at the oars who treated him to the tobacco was a genuine black man.⁶⁹

There was some confusion as to where to disembark the prisoners. A neck of land was chosen, but the lieutenant found it so objectionable, he much preferred being thrown overboard to being landed there. His sense of propriety and sober judgment did not seem to come forth at the times when he needed them most! Someone suggested landing the prisoners about a mile or so above Namquit Point, on a little peninsula called Pawtuxet Cove, which some of the crew mistook for an island.⁷⁰

The crew was released on shore and their hands were freed while their captives returned to the schooner. Dudingston was laid on a blanket,

⁶⁹ Deposition of Patrick Earle, 16 January, 1773, Bartlett, *Records*, VII, 87.

⁷⁰ William Dudingston to John Montagu, 12 June, 1772, Deposition of Peter May, 19 January, 1773, Deposition of William Dickinson, 1 June, 1773, Bartlett, *Records*. VII, 87, 152, 168.

while a few of his men attempted to find shelter for him. As he lay on the beach, Dudingston could see that the *Gaspee* was aflame. Such was the price to be paid for principle! About 3:30 a.m. the flames danced on the quarter-deck of the vessel where the fire was started, as the high tide gushed in. Soon *Gaspee's* guns were heard to go off as the vessel's stores ignited.⁷¹ The target of three months' frustration within the merchant community went up in smoke. Their objective accomplished, the attackers departed from the Point, permitting the fire to complete its task. Three boats were seen leaving the sight of the burning vessel. About 4:30 a.m., one went toward Providence. An hour later another unloaded its passengers from down the Bay-- the Cranston and Pawtuxet people.⁷² The Bristol boat could not be seen by any of the *Gaspee* crew from their position at Pawtuxet.

Later that morning a physician from Providence examined Dudingston and declared that he had a good chance of recovering from his injuries. Later Dudingston called his crew to his bedside and urged them to go with Captain Linzee whenever the *Beaver* should arrive. Dudingston had not lost all. Despite his serious condition he was still alive, something he could be grateful for, considering the uproar he had unleashed during the past weeks. As to his vessel, by late morning it had burned to the water's edge, the remains being nothing more than a smoldering hulk. From the first of

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Deposition of William Dickinson, 12 June, 1772, Public Record Office, Admiral's Dispatches, 1:484, Library of Congress, transcript.

Dudingston's provocations to the aftermath of the event, the entire episode was soon immortalized in verse by an alleged participant, Captain Thomas Swan of Bristol:

A NEW SONG CALLED THE GASPEE

'Twas in the reign of George the Third,
 Our public peace was much disturbed
 By ships of war that came and laid
 Within our ports, to stop our trade.
 Seventeen hundred and seventy-two,
 In Newport Harbor lay a crew
 That played the parts of pirates there,
 The sons of freedom could not bear.
 Sometimes they weighed and gave them chase,
 Such actions, sure, were very base.
 No honest coaster could pass by
 But what they would let some shot fly;
 And did provoke, to high degree,
 Those true born sons of liberty;
 So that they could no longer bear
 Those sons of Belial staying there.
 But 'twas not long 'fore it fell out,
 That William Dudingston, so stout,
 Commander of the "Gaspee" tender,
 Which he has reason to remember,
 Because, as people do assert,
 He almost had his just desert;
 Here, on the tenth day of last June,
 Betwixt the hours of twelve and. one,
 Did chase the sloop, called the "Hannah",
 Of whom one Lindsay was commander.
 They dogged her up Providence Sound,
 And there the rascal got aground.
 The news of it flew that very day
 That they on Namquit Point did lay.
 That night after half past ten
 Some Narragansett Indian men,
 Being sixty-four if I remember,
 Which made the stout coxcomb surrender;
 And what was best of all their tricks,
 They in his breech a ball did fix;
 Then set the men upon the land,

And burnt her up, we understand;
Which thing provoked the King so high
He said those men shall surely die;
So if he could but find them out,
The hangman he'll employ, no doubt;
For he declared, in his passion,
He'll have them tried a new fashion,
Now, for to find these people out
King George has offered very stout,
One thousand pounds to find out one
That wounded William Dudingston.
One thousand more, he says he'll spare,
For those who say they sheriffs were;
One thousand more there doth remain
For to find out the leader's name;
Likewise, five hundred pounds per man
For any one of all the clan.
But let him try his utmost skill,
I'm apt to think he never will
Find out any of those hearts of gold,
Though he should offer fifty fold.⁷⁴

⁷⁴ Staples, *Documentary History*, pp. 55-56, University Microfilms. American Culture Series, University of Michigan.

CHAPTER IV

RHODE ISLAND'S REACTION TO THE *GASPEE*

Residents who were not involved in the destruction of the King's vessel more than likely heard of the event upon waking the following morning. Those who lived along the Bay surely could see the flames in the early hours. By Wednesday morning, June 10, quite a few people were aware of the smoldering hulk at Namquit Point.¹ Even residents of Boston had heard of the news that day. Merchant John Rowe declared that "Captain Dunnisin was wounded & his Vessel burnt at Providence."²

John Andrews, Judge of Rhode Island's vice-admiralty court, was one of the first local residents to learn the particulars. He lived in Cranston but had been dining with friends in Providence where he stayed over night. The following morning, having risen shortly after sunrise, he overheard some conversation among three men outside his window. According to Andrews, it was from these three men that he gained his first knowledge concerning the destruction.³

¹ Franklin B. Dexter, ed., *The Literary Diary of Ezra Stiles* (New York: Charles Scribners, 1901), I. 242.

² Anne Rowe Cunningham. Ed., *Letters and Diary of John Rowe, Boston Merchant, 1759-1779* (Boston: W. B. Clarke Co., 1903), p. 229.

³ Deposition of John Andrews, 5 June, 1773, Gaspee Papers, Rhode Island State Archives. John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England* (Providence, 1857), VII, 171. William R. Staples, ed., *The Documentary History of the Destruction of the Gaspee* (Providence: Knowles, Vose and Anthony, 1854), pp. 45-46, University Microfilms, American Culture Series, University of Michigan.

As he was leaving for the residence of the Deputy Governor, he encountered Daniel Jenckes, Chief Justice of the Inferior Court of Common Pleas for Providence County. Justice Jenckes had heard the news also. He urged Andrews and the Deputy Governor to attend to the matter immediately. In so doing, no one, either in England or America, could justifiably raise the question that civil officials had tacitly or otherwise permitted this unfortunate occurrence. The blame, thought Jenckes, must lie with the guilty ones rather than with the entire colony.⁴

In a conversation with Jenckes, the Deputy Governor was soon informed of the news as well. Sessions probably had some inkling of impending trouble. The night before he had heard a beating drum which he dismissed as nothing more than ten or twelve young boys playing at muster.⁵ When he learned from Jenckes of the *Gaspee's* misfortune, he called it a ". . . disagreeable affair. ..." ⁶ He concurred with the Justice that in

⁴ *Ibid.*

⁵ Deposition of Darius Sessions, 9 January, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII. 127-28. Staples, *Documentary History*, pp. 29-30, University Microfilms, American Culture Series, University of Michigan.

⁶ Deputy Governor Sessions to the Governor of Rhode Island, Providence, 11 June, 1772, Bartlett. *Records*, VII, p. 77.

order to project the reputation of the Colony and its officials, the situation necessitated an immediate investigation of the facts. Accompanied by several residents of Providence Darius Sessions and Andrews set out by horse for Pawtuxet to interview Dudingston. Andrews went, not in his capacity as judge of a vice-admiralty court, but rather as ". . . His Majesty's commissary for the colony. . . ." ⁸ Should there be any salvageable stores from the vessel, Andrews would take them into his custody for the time being.⁹

On arrival at Pawtuxet, they found the lieutenant critically wounded as reported. Sessions was accommodating in every way possible. If there was anything that the officer requested—money, surgeons, more comfortable and convenient lodging—he was ready to fulfill the demand upon request. Dudingston was uncooperative. He said he had his own money and while he might have found his lodging less than desirable, he indicated that he did not wish to be moved. As to his wanting another surgeon, he did not say, but Sessions soon procured the services of a Dr. Henry Sterling. Sessions had not come to Pawtuxet simply to inquire after the

⁷ *Ibid.*, p. 78.

⁸ Deposition of John Andrews, 5 June, 1773, Gaspee Papers, Rhode Island State Archives.

⁹ *Ibid.*

¹⁰ Deputy Governor Sessions to the Governor of Rhode Island, Providence, 12 June, 1772, Bartlett, *Records*, VII, 80. Deposition of Darius Sessions, 9 January, 1773, Gaspee Papers, Rhode Island State Archives.

lieutenant's injuries. Realizing that the reputation of the colony might be endangered by those who had burned the schooner, Dudingston's assistance in providing his version of the incident could furnish the necessary beginning for arrests. But Dudingston continued to prove adamant. He said he would make no statement until he saw his commanding officer, Admiral Montagu. After that time, the entire episode would be aired at the customary court martial, where he would be expected to answer for the loss of his vessel. The reason for his silence was the fear that his statement might be misrepresented to his disadvantage. He did not trust Darius Sessions any more than he had faith in Governor Wanton. In fact, rather than recount the event for Rhode Island's officials, Dudingston preferred that should he die in the interim, the whole issue ". . . might all die with him."¹¹

But Sessions was determined to pursue the matter until he gained some statement concerning the schooner's destruction, from the *Gaspee's* people. Since the lieutenant had no objection to the crew members being interrogated, Sessions questioned them while Andrews conferred with the lieutenant about some practical matters: what type of heavy guns were on board at the time of the burning? What was the nature of the stores and how many were there? Andrews afterwards engaged two men to attend to the *Gaspee's* hardware. Daniel Vaughan, the one-time gunner of Fort George who fired upon the *St. John* in 1764, was hired to retrieve old iron from the

¹¹ Deputy Governor Sessions to the Governor of Rhode Island, Providence, 11 June, 1772, Bartlett, *Records*, VII, 77.

schooner's remains. More specific salvage operations were undertaken by Samuel Aborn who recovered anchors, guns, and other stores which he then stocked until further notice.¹² Before Andrews left Dudingston, he ordered a boat to transfer the crew members to Newport where they would come on board the *Beaver* as the lieutenant had requested.

As a result of the morning's activities. Sessions could rest more easily. He had inquired after Dudingston's condition and tried to make him more comfortable. Although an attempt to obtain a statement from him was unsuccessful, he did manage to secure statements from others on board the schooner. He had ordered John Andrews to look after the needs of the crew--to be sure that there was food, that temporary lodging was provided, that arrangements were made for their trip to Newport. Naval stores, guns and other hardware were safely kept in a warehouse until Captain Linzee could take possession of them. By next morning the crew had left for Newport, and a neighborhood man was hired to look after Dudingston.¹⁴ Andrews later made several trips to visit with the lieutenant, although the latter persisted in his determination to remain silent about his misfortune. Under these circumstances, Andrews was unsuccessful in his efforts to obtain evidence from Dudingston concerning the culpability of those involved.¹⁵

¹² Acts and Resolves of the Colony of Rhode Island, August, 1772, Rhode Island State Archives, Andrews Deposition, Bartlett, *Records*, VII, 171.

¹³ *Ibid.*

¹⁴ Sessions Deposition, 9 January, 1773, Bartlett, *Records*, VII, 129.

¹⁵ Andrews Deposition, Bartlett, *Records*, VII, 171.

As second in command of civil affairs in the colony, Deputy Governor Sessions lost no time informing Governor Wanton at Newport of the burning. The nature of the incident was serious enough to rank as a major crisis in the colony, and because all important matters were considered and disposed of by the colony's branch of government with the real power, the General Assembly, that body's advice would inevitably be sought at this critical juncture. The adjournment of the General Assembly complicated matters.

The General Assembly consisted of two chambers. The upper house or council had twelve members including the governor, the deputy governor, and ten assistants or magistrates, two elected from each of the five counties in the colony. The lower chamber was known as the House of Deputies. It sat after each of the biannual elections in May and October, although there were other sessions as well in the interim. Because the General Assembly was adjourned until August, responsibility for making speedy decisions involving the *Gaspee* affair rested primarily with the governor and the deputy governor.

Deputy Governor Sessions' letter of June 11 to Governor Wanton began with an appropriately solemn tone. "A very disagreeable affair has lately happened. . . " ¹⁶ Sessions enclosed the affidavits of two crewmen: Bartholomew Cheever, a sentinel on duty the night of the attack, and John Johnson, a boatswain. ¹⁷ After Sessions had enumerated the steps which he

¹⁶ Deputy Governor Sessions to the Governor of Rhode Island, Providence, 11 June, 1772, Bartlett, *Records*, VII, 77.

¹⁷ *Ibid.*, p. 78.

had taken to alleviate the discomfort of the lieutenant and crew, he confided his own opinions in the matter:

The dangerous tendency of this transaction, is too obvious, to pass it over with the least appearance of neglect; and therefore, doubt not Your Honor will give it due attention, and prosecute such measures as wisdom and prudence shall dictate.¹⁸

Having conferred with some residents of Providence he could report:

It is the prevailing opinion of the gentlemen in this quarter, that a proclamation, with a large reward, be issued, for apprehending the persons who have thus offended. You will please consult the gentlemen your way; and in the mean time, I will endeavor to collect the sentiments of the members of the Assembly, and other principal gentlemen by name, and send the same to Your Honor, as soon as may be.¹⁹

Hopefully the proclamation would remove much of the suspicion which might suggest to British officials that Rhode Island's civil magistrates were implicated in the event, if not overtly, then certainly tacitly. Their failure to take adequate preventive measures earlier was not in their favor.

Upon receiving the letter from the Deputy Governor on June 11, Governor Wanton convened as many members of his council and members of the House of Deputies as were available.²⁰ On June 12, they had unanimously given their approval to a proclamation.²¹ This decision was overwhelmingly

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Joseph Wanton to John Montagu. 12 June, 1772, Bartlett, *Records*, VII, 85.

²¹ Joseph Wanton to John Montagu, Newport, 12 June, 1772, Bartlett, *Records*, VII, 85

avored by the legislators from Providence as well.²² How to designate the status of the vessel was one question which was given sufficient consideration. Should it be referred to as his Majesty's schooner, the *Gaspee*, when in fact the validity of Dudingston's commission had not been fully established to the satisfaction of the colony? Or should the proclamation refer to the schooner *Gaspee*?²³ This question was settled with amazing speed even though the authority and legality of Dudingston's commission had been an issue for several months. The proclamation made reference to ". . . His Majesty's armed Schooner the *Gaspee*. ..." ²⁴

The printer of the *Newport Mercury*, Solomon Southwick, was contracted to publish the proclamation. The Governor ordered:

. . . all his Majesty's officers, within the said colony, both civil and military, to exert themselves, with the utmost vigilance, to discover and apprehend the persons guilty of the aforesaid atrocious crime, that they may be brought to condign punishment.²⁵

Two hundred copies of the document were posted throughout the colony thus providing all residents with the opportunity of familiarizing themselves with the facts, as witnesses of this bona fide commitment to justice. Those who read the proclamation could also make a bid for the £500 reward, if they were daring enough to turn informer and risk reputation, and perhaps life,

²² Deputy Governor Sessions to the Governor of Rhode Island, Providence, 11 June, 1772, Bartlett, *Records*, VII, 77.

²³ *Ibid.*

²⁴ Proclamation, Bartlett, *Records*, VII, 81.

²⁵ *Ibid.*

in the effort.²⁶

The colony's officials did not table the *Gaspee* incident after the proclamation was issued. Probably with the continued advice of assistants and deputies, Governor Wanton took additional measures to fulfill the responsibilities of his government in this matter. Because the Governor did not wish to implicate either himself or his colleagues in the destruction of the vessel (the ministry had with good reason linked the government officials of Rhode Island to the attack upon the *St. John* eight years before) he penned a letter to Secretary of State, Lord Hillsborough, two days after the proclamation was issued, sharing with him the facts of the vessel's destruction and the wounding of the commander.

After informing Hillsborough that the Deputy Governor and he had taken every opportunity to apprehend the guilty persons, Wanton placed the blame for the incident squarely upon Dudingston by offering several examples of the lieutenant's unwarranted behavior.²⁷ Communications with Admiral Montagu in Boston likewise indicated the great concern which the colony's civil officials displayed during this critical time.²⁸

²⁶ John Eliot Alden, ed., *Rhode Island Imprints, 1727-1800* (New York: R. R. Bowler Co., published for the Bibliographical Society of America, 1949), p. 199.

²⁷ Joseph Wanton to the Earl of Hillsborough, 16 June, 1772, Bartlett, *Records*, VII, 91.

²⁸ Joseph Wanton to John Montagu, Newport, 12 June, 1772, Bartlett, *Records*, VII, 85.

Governor Wanton's desire to obtain custody of an alleged participant in the burning was the only instance in which the colony's government leaders made a serious attempt to round up suspects. The man in question was Aaron Briggs. He was a servant, indentured to a resident of Prudence Island, Samuel Tompkins. Briggs had run away from his master and was seeking refuge on board the *Beaver*. Captain Linzee's interest in Briggs mounted when Patrick Earle, a former member of the *Gaspee* company, but now stationed on board the *Beaver*, claimed to have recognized Briggs as the black man who had rowed him to shore the morning of June 10.²⁹ The recollection was vivid for him because he had asked Briggs if he could row in order to warm himself. Briggs not only offered him an oar; he also gave the sailor a wad of chewing tobacco.³⁰

Linzee transferred the stowaway to the *Swan*, and placed him in irons, while notifying Admiral Montagu of his new found discovery. Montagu must have been elated at the possibility of having a witness in hand. He ordered Linzee to transport Briggs to Boston for interrogation, sent a letter to Governor Wanton on July 8, thus resumed their correspondence, and instructed gentlemanly James Ayscough (commander of the *Swan*) to release Briggs from his shackles and permit him some freedom aboard the vessel.³¹

²⁹ Aaron Briggs was also referred to as the mulatto and the Indian.

³⁰ Deposition of Patrick Earle, 16 January, 1773. Bartlett, *Records*, VII, 141-42.

³¹ John Montagu's Journal, 8 July, 1772, Papers Relating to the Gaspee, Compiled by Walter A. Edwards, Rhode Island Historical Society.

The mention of a specific and likely witness, Aaron Briggs, was enough to elicit an immediate response from Governor Wanton. On July 11, three days after receipt of Montagu's letter, Wanton procured depositions from three people--Briggs' master, and two other servants in the Tompkins household, Somerset and Jack, all of whom declared that Aaron Briggs had never left Prudence Island on the evening of June 9. For years the three servants had slept in the same bed, and Somerset and Jack insisted that Aaron was in bed with them on the morning of June 10.

Despite these depositions, the Admiral preferred to give credence to Briggs' statement, which named John and Joseph Brown as ringleaders in the attack. He also mentioned a Potter from Bristol and a Dr. Weeks of Warwick.³² Although Wanton had maintained that Briggs was a liar, the servant's accusations were serious enough to cause the Governor some alarm, for he demanded the right to examine the suspect for himself.

On July 16, Governor Wanton informed Captain Linzee that he planned to examine Briggs and that a deputy sheriff would soon call on him to take custody of the servant. Justice Metcalf Bowler handed a warrant to a deputy sheriff, Robert Lillbridge, who with his assistant James Brenton, tried to board the *Beaver* the following afternoon. Because Captain Linzee was on shore at Brenton's Point, the subordinate officer was understandably reluctant

³² Deposition of Aaron Briggs, 14 January, 1773, and Statement of the Negro Aaron enclosed in letter of Montagu to Wanton, 8 July, 1772, Bartlett, *Records*, VII. 137, 93.

to authorize the two men to board the *Beaver*.³³

While at Brenton's Point, Linzee visited with Dudingston who was staying at the home of Jahleel Brenton. Lillbridge and his assistant went to the Point to speak with Linzee, who would not permit the deputy sheriff to talk with him; he feared that Lillbridge would produce a writ of arrest. Instead, he agreed to talk with the assistant deputy, Brenton. Linzee treated the warrant in a cavalier fashion, informed Brenton that he took orders only from Admiral Montagu and not from the Governor, and refused to turn Briggs over to the colony. Governor Wanton once again tried to secure custody of Briggs by registering a protest with Montagu, but the Admiral would not permit the release of the servant.³⁴ Instead, Wanton had to content himself with the belief that Aaron Briggs' testimony might be invalidated at a later date. Until then, British officialdom had some specific individuals to pursue in their determination to prosecute suspects.

There was an interesting footnote to the Aaron Briggs story. The very day the deputy sheriff and his assistant had sought out Linzee on Brenton's Point, the Captain had a marine guard surround the Brenton home

³³ Deposition of James Brenton, 8 January, 1773, Bartlett, *Records*, VII, 127.

³⁴ Montagu wrote Wanton informing him that had Briggs' master, Samuel Tompkins, not brought suit for the arrest of Linzee (Linzee was holding Briggs in custody) the Admiral would have released Briggs to Wanton. But since arrest procedures had been undertaken, Montagu refused to surrender Briggs. John Montagu to Joseph Wanton, 1 September, 1772, Bartlett, *Records*. VII, 101.

as protection for Dudingston. Taking no chances, the next day Linzee removed Dudingston to the *Beaver*, where he would remain until he sailed for England to stand trial for the loss of his vessel.³⁵

When the General Assembly finally convened on August 17, 1772, it promptly considered the disposition of matters relating to the incident in June. On record, the deputies of the lower house referred to the burning as ". . . that atrocious piece of villainy. . ." and commended Governor Wanton for his actions after the affair.³⁶ They asked him to forward the proceedings of his transactions to Henry Marchant, the colony's attorney-general who was presently in England. They also urged Wanton to continue pursuing "... such measures respecting the said affair, during the recess of the General Assembly, as shall appear necessary."³⁷

The deputies discharged several debts incurred by Sessions and Wanton. With respect to the proclamation, they promised to ". . . make provision for paying the above mentioned Reward in Case any Person or Persons shall be entitled thereto."³⁸ The deputies also voted "Eleven pounds, eighteen shillings, and two pence, half-penny. . . ." to Samuel Aborn for

³⁵ Dudingston went to England aboard the *Beaver* with Captain and Mrs. Linzee.

³⁶ Rhode Island Colony Records, August Session, 1772, Vol. IX, 3, Rhode Island State Archives.

³⁷ *Ibid.*

³⁸ *Ibid.*

". . . taking up, and securing, the Anchors, Guns, and other Stores of His Majesty's Schooner. ..." ³⁹ A third resolution involved payment to Deputy Governor Sessions for services rendered: the ride to Pawtuxet with Andrews, the securing of affidavits from several crew members, victualling expenses for the crew, the expenditures of transporting the sailors to the *Beaver* with provisions, the cost of sending a messenger to Newport with a letter for Governor Wanton, and finally the outlay of cash for Samuel Aborn. For his time and efforts, the Deputy Governor received "Nine pounds, One Shilling, and nine Pence, Halfpenny, lawful Money. ..." ⁴⁰

Of all the financial matters which the Assembly deliberated, the most interesting involved Joseph Rhodes' financial request. In addition to being a cooper by trade who gave Cranston as his local address, he was also Dudingston's host at Pawtuxet. He had a sizable sum of the lieutenant's money which he refused to return to him. Apparently Rhodes considered himself entitled to it as remuneration for Dudingston's room and board; Dudingston disagreed. Consequently, Sessions from and upper house, and Stephen Hopkins as a deputy for Providence, were appointed by the General Assembly to

³⁹ Acts and Resolves of the Colony of Rhode Island, August, 1772, Rhode Island State Archives, Rhode Island Colony Records, Vol. IX, 3, Rhode Island State Archives.

⁴⁰ Mr. Aborn, himself a member of the House of Deputies from Warwick, received double payment for his salvaging services, initially from Sessions and then again reimbursed by the General Assembly, Rhode Island Colony Records, August Session, 1772, IX, 3. Acts and Resolves of the Colony of Rhode Island, August, 1772, Rhode Island State Archives.

adjudicate the financial dispute and to inform Dudingston of his legal rights should the matter not be reconciled to his or to Rhodes' satisfaction.⁴¹

Having dispensed with their financial obligations and advices to the Governor, the members of the General Assembly adjourned their August session. Both the executive and legislative branches of government had committed themselves to recognizing the lawlessness involved in the destruction of the schooner. The colony's officials had dispensed with many of their obligations by providing for the needs of the commander and his crew. The Governor had been instructed to continue taking all steps which he deemed necessary, although the deputies were noticeably vague on this point. They did not explicitly instruct the Governor to seek arrests of suspects in the burning. Aside from issuing his proclamation, he did nothing else in this regard.⁴²

By the end of the summer the government had thus far taken no vigorous steps which might lead to arrests. The attorney general had not been directed to take any action against suspects. Aside from the names Briggs had mentioned there were no other suspects. No charge was handed to the colony's grand jury to inquire into the affair. The only court action which concerned the *Gaspee* and Lieutenant Dudingston was the issuance of a

⁴¹ Rhode Island Colony Records, August Session 1772, IX, 4, Journal House of Deputies, August, 1772. Acts and Resolves of the Colony of Rhode Island, August, 1772, Rhode Island State Archives.

⁴² Journal, House of Deputies, August, 1772, Rhode Island State Archives.

writ of arrest filed against the lieutenant by the merchants of the firm, Jacob Greene and Company.

The injured parties had waited patiently since February, when the *Fortune* was seized, for the opportunity to serve Dudingston with the writ, something which could not be done until he actually put foot on shore. For this reason Dudingston had been careful to avoid land. The court showed him no mercy when on June 12, the high sheriff delivered the writ despite the fact that the lieutenant was obviously in no condition to be moved to a jail, let alone stand trial.⁴⁴ Shortly after the sheriff had departed, Dudingston was visited by the customs collector from Providence, William Checkley. Since he was afraid that the high sheriff might treat the lieutenant with "great severity" he had written to the Commissioners of Customs in Boston, asking them for advice on this account.⁴⁵ Despite Collector Checkley's fears, the case against Lieutenant Dudingston did go to trial.

In deciding to sue, the Greenes contended that they had ". . . casually lost the said rum, Jamaica spirits and sugar out of their hands and possession. . ." and that Dudingston converted these to his own use (an action called *trover*) even though he knew to whom the shipment belonged. They

⁴³ *New Hampshire Gazette and Historical Chronicle*, 21 August, 1772,

⁴⁴ The court, perhaps fearful that Dudingston would be moved on board a navy vessel. issued the writ immediately, while they had the opportunity.

⁴⁵ William Checkley to the Commissioners of Customs, Providence, 12 June, 1772, Bartlett, *Records*, VII, 87-88.

estimated their loss at £600 and sued for recovery of the value of the shipment.⁴⁶ The plaintiffs counsel enumerated the charges brought against the defendant who had been requested several times to return the merchandise to the Greenes but who had refused.⁴⁷

The jury of the Inferior Court of Common Pleas in East Greenwich returned a verdict in favor of the plaintiffs. One Providence observer reacted with obvious glee to the outcome of the court proceedings, while offering some interesting commentary upon the *Gaspee* affair;

On Wednesday last came on the Case of Nathaniel Green, &c. [Jacob Greene and Co.] against Dudingston, at the Superior Court in the County of Kent. The action was *Trover* and Conversion of Rum, Jamaica Spirits, &c. which Green had entered at the Custom-House, and paid the duties of. Duddingston who has since been Wounded by the Narraganset Indians in a Riot, seized these Goods of Green's, sent them to Boston, & had them Condemned, contrary to Law and Justice. --After he was Wounded he was carried to Patuxit, where he was arrested, because he could not fly from the Sheriff, as he had before done. The Jury gave their Verdict for the Plaintiff to recover £295 Lawful Money, the Sum sued for the costs.⁴⁸

On behalf of his absent client, James Brenton appealed this decision to the Superior Court of Judicature, Court of Assize, and General Gaol Delivery. When the court convened in October, 1772, Dudingston's lawyer could not attend because of inclement weather. In fact two of the justices. Chief Justice Stephen Hopkins and Metcalf Bowler, were not present either. Although the Superior Court upheld the decision of the lower court, Brenton

⁴⁶ Samuel W. Bryant, "Rhode Island Justice--1772 Vintage," *Rhode Island History*, XXVI (July, 1967), 66.

⁴⁷ *Ibid.*, 67.

⁴⁸ *New Hampshire Gazette and Historical Chronicle*, 21 August, 1772.

petitioned the General Assembly asking for a stay of judgment. Both houses of the Assembly granted his request, and the case was rescheduled.⁴⁹

At a session of the Superior Court in April, 1773, Brenton introduced two pieces of evidence to support his contention that the action of trover was legal. He presented a decree from the district vice-admiralty court in Boston which justified seizures on the high seas. The plaintiffs' counsel contended that the seizure of the *Fortune's* cargo was made on Narragansett Bay within the colony, not on the high seas, and furthermore that a decree of the vice-admiralty court could not be entered in ". . . evidence in a court of Record without Oath made of the Truth thereof."⁵⁰ Brenton's second item of presentation was Dudingston's deputation from the Commissioners of Customs at Boston to serve as a customs officer. Plaintiffs' counsel again objected on the grounds that the commission did not have affixed to it the seal of the secretary of the Board (Richard Reeves), that one of the board members (John Temple) had .since been removed from the board which rendered the commission invalid, and that the commission had not been recorded in Rhode Island nor sworn before a Rhode Island magistrate.⁵¹ The Superior Court rejected both the decree and the deputation. The jury upheld the decision of the Inferior Court of Common Pleas

⁴⁹ Bryant, "Rhode Island Justice," *Rhode Island History*, XVII, 69.

⁵⁰ *Ibid.*, 70.

⁵¹ *Ibid.*, 71.

and a writ was thereupon issued instructing Dudingston to pay the judgment. The court was determined that Dudingston should not be permitted to appeal this decision. Rhode Island law required that damages be in excess of the value of seized goods before a decision could be appealed. In ordering the lieutenant to pay an amount below the value of the seized goods (£295 plus court costs rather than £600) Dudingston's lawyer could not enter an appeal for him. The fine was eventually paid by Charles Dudley on May 20, 1773.⁵²

Public reaction in Rhode Island to the *Gaspee* incident varied depending upon each man's political viewpoint. To one undisputed friend to Government and parliamentary authority it appeared as though ". . . the generality of men . . . applauded it." ⁵³ Indeed some did. An incident involving Mr. Dagget, the *Gaspee's* onetime pilot, illustrated the sentiments of some of the violent-prone citizens of Rhode Island. Pilots who sold their services to the Royal Navy were detested by many colonials. Despite the expense involved, Admiral Montagu indicated that pilotage was a necessary evil:

I can't help observing to their Lordships the great Expense of Pilotage in this Country, and particularly for the Schooners; but must further beg leave to observe the greatest part of their expense arises from their being frequently Employed in the Service of the Customs, which lays them under the Necessity of running into the different Harbours, and Creeks along the Coast, and obliges them to have Pilots for fear of Accidents, as most of the Harbours are full of Rocks.⁵⁴

⁵² *Ibid.*

⁵³ [Anonymous] Account of Events Pertaining to Destruction of Schooner *Gaspee*, Manuscript, n.p., c.1772, John Hay Library, Brown University.

⁵⁴ John Montagu to Philip Stephens, 31 January, 1772, Public Record Office, Admiral's Dispatches, 1:484, Library of Congress transcript.

To help defray this expense, Montagu had requested that the Commissioners of Customs pay pilotage costs when a naval vessel was acting in the capacity of a customs vessel.

In the early morning of June 10, 1772, after the attackers had wounded Lieutenant Dudingston, they demanded Mr. Dagget. They learned soon enough that he was no longer among the schooner's crew, having been transferred to the *Beaver* six ~~months~~ **weeks** before. Dagget managed to escape punishment at the hands of the attackers. He later made the unfortunate mistake of going ashore to a sheep shearing at Narragansett, only a few days' after the *Gaspee* suffered her untimely end. Someone recognized him, and the *Providence Gazette* reported that he ". . . was seized by the Company, who cut off his Hair, and performed on him the Operation of Shearing in such a Manner, that his Ears and Nose were in imminent Danger." ⁵⁶

There were other indications of violence in the days immediately following the destruction of the King's schooner. A Boston paper reported that two tidewaiters were roughed up by a group of Rhode Islanders who ". . . stripped the Waiters, then rubbed their Bodies over with Oil or Tar

⁵⁵ William Dickinson Deposition, 12 June, 1772. Public Record Office, Admiral's Dispatches, 1:484, Library of Congress transcript.

⁵⁵ *Providence Gazette*, 13 June, 1772.

and Lampblack, . ." holding them prisoner until the following morning.⁵⁷ A "Rhode Island Gentleman," objecting to the coverage afforded what he thought was misinformation, managed to elicit a retraction from the Boston paper, which later attributed its false information to an early courier. The "corrected" report merely eliminated the mention of tar, although it maintained that the tidewaiters in truth were incarcerated until daybreak.⁵⁸

Another occurrence was illustrative of the fear with which the friends of the King viewed the attack upon royal authority. Again it illustrated the public mood in Rhode Island in the weeks following the destruction of the schooner. Sometime in July, Dudingston had been placed on board Captain Linzee's *Beaver* and transported from Joseph Rhodes' home at Pawtuxet to the home of Jahleel Brenton, on Brenton's Point in Newport.⁵⁹ Perhaps Admiral Montagu and Captain Linzee thought it best to get the lieutenant as far away from Providence, the scene of his troubles. Shortly after this move, Linzee heard reports that Dudingston was no safer at Brenton's Point than he had been at Pawtuxet Cove. Rumors warned that a mob planned to storm Jahleel Brenton's house, capture Dudingston, and murder him. Linzee ordered a "number of marines" to guard the house from such an occurrence, even though Mr. Brenton protested that his house could afford Dudingston all

⁵⁷ *Massachusetts Gazette and Boston News Letter*, 2 July, 1772.

⁵⁸ *Ibid.*, 9 July, 1772. *Virginia Gazette*, 6 August, 1772.

⁵⁹ *Massachusetts Gazette and Boston News Letter*, 13 August, 1772.

the protection which he might need.⁶⁰

So high-pitched were emotions that a sentinel mistook, for one of the hooligans, a colleague as he sauntered back in the dark to his post. He may have fired a shot. In any event the fracas awakened Mrs. Brenton who thought that the mob had finally come to take Lieutenant Dudingston. The *Newport Mercury* was sure that this misunderstanding was deliberately

"... invented, designed, as is shrewdly supposed, entirely to bring an odium on the town of Newport. . . ." ⁶¹ The paper went on to observe that to perpetuate this "... *farsical* fear, [that Dudingston would be murdered] the next day Capt. Linzee had Mr. Duddingston removed on board his ship." ⁶² With mock sympathy, the Boston paper fretted that the whole incident would "... bring further Odium on Lord Hillsborough's *loyal Colony* of Rhode Island." ⁶³

The sense of caution with which the colony's civil officers handled the *Gaspee* affair (there were no energetic efforts to apprehend suspects) was mirrored in the reporting by both of the Rhode Island newspapers. Quite terse in its comments, the *Newport Mercury* said: "Last Tuesday night the schooner *Gaspee* was burnt, near Pawtuxit; all the particulars yet come to our

⁶⁰ *Ibid.*

⁶¹ *Newport Mercury*, 3 August, 1772.

⁶² *Ibid.*

⁶³ *Massachusetts Gazette and Boston News Letter*, 13 August, 1772. This story was also carried in the *Virginia Gazette*, 3 September, 1772.

knowledge are expressed in the Governor's proclamation below." ⁶⁴ John Carter's *Providence Gazette* was more explicit in its coverage:

Monday last a sloop from New-York arrived at Newport, and after reporting her Cargo at the Custom-House, was proceeding up the River on Tuesday. The Gaspee armed Schooner, then lying near Newport, immediately gave chase to the sloop, crowding all the Sail she could make; but the People on board not being acquainted with the River, at three o'clock in the Afternoon she ran on Namquit Point, near Pawtuxet. About Twelve at Night a great Number of People in Boats boarded the Schooner, bound the Crew, and sent them ashore, after which they set fire to the Vessel, and destroyed her. A Pistol was discharged by the Captain of the Schooner, and a Musket or Pistol from one of the Boats, by which the Captain was wounded, the Ball passing through one of his Arms, and lodging in the lower Part of his Belly. He was immediately taken to Pawtuxet, and we are told is in a fair way to recover. ⁶⁵

Considerable interest in the *Gaspee* affair was evidenced by the press outside of Rhode Island. News items printed throughout the colonies originated from the papers in Providence, Newport and Boston. The attack upon the schooner and the commander, Governor Wanton's proclamation, the Greenes' lawsuit, the attack upon the pilot, Dagget, as well as the rumors regarding the plan to murder Dudingston and the account regarding the incarceration of the tidewaiters, were all reported. Massachusetts Bay and New Hampshire received and printed the news promptly from the Rhode Island papers.

One circulating rumor may have been indicative of a reaction in

⁶⁴ *Newport Mercury*, 15 June, 1772.

⁶⁵ *Providence Gazette*, 13. June, 1772.

⁶⁶ Philip Davidson, *Propaganda and the American Revolution, 1763-1783* (Chapel Hill: University of North Carolina Press, 1941), p. 227. *New Hampshire Gazette and Historical Chronicle*, 26 June, 1772, and 14 and 21 August, 1772.

Connecticut to the *Gaspee* incident. Connecticut merchants had long suffered from the excesses of the revenue officers as had Rhode Islanders. Only days after the burning, Admiral Montagu told the *Swan's* Captain Ayscough that Connecticut merchants were allegedly determined to guard their trade from the British navy and custom house boats.

. . . I had recd Advice of the people of New London having fitted out a Sloop well Armed, and Maned to attack any of the Kings Schooners: that might attempt to seize any Vessel in Illicit Trade, directed him to send the Beaver off New Haven to look out for said Armed Sloop, and to use every endeavour to seize her, and to send her to me immediately [*sic*]. . . ⁶⁷

Newspapers in Pennsylvania allotted full coverage to the *Gaspee* burning as more complete reports were made available by the New England papers. The first accounts appeared within two weeks of the vessel's destruction, and the continuing coverage which the newspapers afforded Rhode Island's event was indicative of the sustained interest by this trading colony.⁶⁸ Distance accounted for the delayed response by the press in the southern colonies of Virginia and South Carolina. By mid-July the papers in these colonies were full of faithfully reprinted stories from the New England presses.⁶⁹

The reaction to the burning of the schooner had been varied. The Governor's deputy, Darius Sessions, had tended to the necessary details

⁶⁷ Admiral Montagu's Journal, Edwards, Gaspee Papers, Rhode Island Historical Society.

⁶⁸ *Pennsylvania Gazette*, 25 June, 1772, *Pennsylvania Chronicle and Universal Advertiser*, 29 June, 1772.

⁶⁹ *Virginia Gazette*, 9 July, 1772

which demanded disposition, and the Governor, with the assistance of the General Assembly, had seen fit to issue a proclamation. The reconvened legislature subsequently approved of the Governor's actions. Yet no decided effort was begun to arrest persons suspected of being involved in the attack on the schooner and the lieutenant. The caution which the civil officials displayed was also evident in the reporting of both local newspapers.

Despite the protestations of public officials in their written statements condemning the destruction and violence, the attitude prevailed that there was little remorse or abhorrence for what had happened. Governor Thomas Hutchinson of Massachusetts appraised the temperament of colonial officials when he ventured the prediction ". . . that nothing soon will be done by authority there [Rhode Island] than issuing a proclamation and perhaps not even that." ⁷⁰

Public reaction was not so cautious, as the shearing of Dagget indicated. The rumors concerning the fate of the two tidewaiters and the stories that a mob planned to murder the lieutenant attested to the public mood during the immediate days and weeks following the *Gaspee's* burning. If most colonials did not react with great surprise to the destruction of the schooner it was probably because they considered that act of destruction a natural consequence of events which preceded it. Neither friends nor opponents of

⁷⁰ Thomas Hutchinson to the Earl of Hillsborough, Boston, 12 June, 1772, Colonial Office 5:761 Massachusetts Bay, 1772, folio 215, No. 27, Edwards. Gaspee Papers, Rhode Island Historical Society.

Government's commercial policies after 1763 could really react with total disbelief to the schooner's fate. Everyone associated with the mercantile community was aware of the abrasive situation which existed as a result of the men-of-war which sailed the waters by the coastal cities. Governor Hutchinson, an undisputed friend of Parliamentary measures for the colonies, observed that he had ". . . apprehended there would be something tragical follow from a set of people [Rhode Islanders] to whom every servant of the Crown who does his duty will always be obnoxious." ⁷¹

The surprise and anxiety which most colonials displayed related not so much to the destruction of the *Gaspee*, but rather to the reaction which it would elicit from colonial radicals and crown officials in England. Again Governor Hutchinson accurately assessed the mood of most groups in the colonies when he wrote:

People in this province [Massachusetts Bay] both friends and enemies to government, are in great expectations from the late affair at Rhode Island, of the burning the King's schooner; and they consider the manner in which the news of it will be received in England, and the measures to be taken, as decisive. If it is passed over without a full inquiry and due resentment, our liberty people will think they may with impunity commit any acts of violence, be they ever so atrocious, and the friends to government will despond and give up all hopes of being able to withstand the faction. ⁷²

Burning a royal vessel was an act which could not be passed over by England. Colonials who realized this, however, naturally had only vague ideas of the

⁷¹ *Ibid.*

⁷² Governor Hutchinson to Secretary Pownall, Boston, 29 August, 1772, Bartlett, *Records*, VII, 102.

mode of procedure upon which the ministry would finally settle. Rhode Islanders would know what that decision was just as quickly as Captain Squires of the *Bonetta* could carry Admiral Montagu's dispatches to England and return with the Government's response.

CHAPTER V

THE KING'S FRIENDS RESPOND

For ministers in Great Britain's Privy Council, distance had dictated dependence upon resident and native officials who provided them with information relating to affairs in America. The ministry's perspective on American matters might have received proper balance if ideas and attitudes outside the circle of King's friends had been given equal weight. Understandably members of the Privy Council were inclined to accept the viewpoints of crown servants, whether they were resident or native Americans, over those of provincial officials.

As an example, Joseph Wanton, Governor of Rhode Island, was, in theory, the royal representative of King George in Rhode Island. In practice Governor Wanton was the servant of the Rhode Island electorate to whom he acquiesced every May at election time. Because Wanton naturally placed the interests of the colony above those of the ministry, his thoughts were given considerably less attention than those of Governor Thomas Hutchinson of Massachusetts.

Hutchinson was born in the colonies at Boston in 1711. He received his education, a B.A. and an M.A., from Harvard in 1727 and 1730 respectively. He entered the Massachusetts House of Representatives in 1737 and

later served in the colony's council from 1749-1766. He served in two other important capacities, as chief justice and lieutenant governor, before the King appointed him Governor of Massachusetts Bay in 1770. As a constant friend of the King, he had brought much trouble upon himself for his political views. His presumed support of the Sugar and Stamp Acts was the reason for the ransacking of his residence and the burning of his papers and books by a Boston mob.¹ Obviously Hutchinson's opinions received greater consideration at cabinet meetings in England than did those of Wanton.

Rear Admiral John Montagu was another royal official on whom the King could depend. Born in 1719, he was the son of James Montagu of Lackham in Wiltshire, England. He entered the royal academy at Portsmouth and, by the time he had reached his twenty-first birthday, he was made lieutenant of the *Buckingham*. The high point of his career came in August, 1771, when he was appointed Commander-in-Chief of the naval forces in North America.²

His reception in Boston varied depending upon one's political persuasion. The colonial writer and poet, Philip Freneau, found him ". . . hotheaded, fat and white-haired."³ Lawyer John Adams was more caustic in his

¹ Carl L. Becker, "Thomas Hutchinson", *Dictionary of American Biography*, Dumas Malone, ed. (New York: Charles Scribner's Sons, 1932), IX. 439, 440, 441.

² John Knox Laughton, "John Montagu", *Dictionary of National Biography*, Sir Leslie Stephen and Sir Sidney Lee, eds., XIII, 705.

³ George Otto Trevelyan, *The American Revolution*, ed. by Richard B. Morris (New York: David McKay Co., Inc., 1965), p. 82. Fred Louis Pattee, "Philip Freneau," *Dictionary of American Biography*. Allen Johnson and Dumas Malone, eds., VII, 27.

observations of Admiral Gambler's new successor:

As to the Admiral his continual Language is cursing and damning and God damning, "my wifes d--d A--se is so broad that she and I can't sit in a Chariot together"--this is the Nature of the Beast and the Common language of the Man.

Adams added that Montagu's ". . . Conversation by all I can learn of it is exactly like [James] Otis's when he is both mad and drunk."⁴ On the other hand when the Boston merchant John Rowe welcomed Montagu to Boston, he observed that the Admiral received him politely.⁵

In addition to being "hot-headed" (and his correspondence indicates that Freneau was correct), Montagu was also a man of strong convictions. At times he let his own penchant for personal homage interfere with the effective exercise of his official responsibilities. For instance, he acted as though he considered himself in station far above the Governor of Rhode Island when he lectured Wanton on the virtues of obedience to higher authority. When the news of the *Gaspee* reached him on June 10, he viewed the Rhode Island occurrence as truly "piratical proceedings" because he decried verbal or physical attacks upon authority.⁶

⁴ L. H. Butterfield, ed., *The Adams Papers*, Vol. II: *Diary and Autobiography of John Adams, Diary, 1771-1781* (New York: Atheneum, 1964), p. 73.

⁵ Anne Rowe Cunningham, ed., *Letters and Diary of John Rowe, Boston Merchant, 1759-1762, 1764-1779* (Boston: W. B. Clarke Co., 1903), p. 219.

⁶ Montagu's Journal does not mention the source of his information. Linzee or Charles Dudley were the two likeliest people to forward the news to him.

To him William Dudingston as a lieutenant in the royal navy was a representative of royal authority and therefore deserving of respect commensurate with his rank. Montagu would surely have concurred with Hutchinson that any such officer would be unpopular in a colonial mercantile community where he discharged his duties. Montagu had nothing but sympathy for Dudingston, strongly convinced that his subordinate should not be punished for something which was beyond his ability to control.⁷

The Admiral had equally strong convictions about the government and people of Rhode Island. "Piratical proceedings," as he called them, could only result from a "lawless, Piratical people." ⁸ Montagu doubted that the Governor and assembly really cared if likely suspects were ever apprehended. To substantiate his opinions of the civil officials, he pointed to their behavior in the *St. John* incident and their very obvious involvement in illicit trade with the West Indies. He may very well have considered it his prerogative to spur on prosecution if not to actually proceed against the offenders in the incident. Yet officially and publicly he continued to maintain that Governor Wanton, not the Admiralty, must take the initiative unless instructions from his king directed him otherwise.⁹ Pleading with and urging the Governor to

⁷ Admiral Montagu to Lord North, Boston, in New England, 12 June, 1772, Colonial Office, 5:145, 35(d), Papers Relating to the Gaspee. Compiled by Walter A. Edwards, Rhode Island Historical Society.

⁸ *Ibid.* Admiral John Montagu's Journal, 13 June, 1772, Edwards, Gaspee Papers, Rhode Island Historical Society.

⁹ Admiral Montagu to Governor Wanton, 1 September, 1772, John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England* (Providence, 1857), II, 101. Admiral Montagu to the Earl of Hillsborough, Boston in New England, 1 September, 1772, Colonial Office, 5:761, Massachusetts Bay, folio 377, Edwards, Gaspee Papers, Rhode Island Historical Society.

apprehend the offenders was the only apparent pressure which he exerted upon Wanton.

By the evening of June 10 Midshipman William Dickinson had arrived in Boston where he signed a deposition of his version of what had happened during the early morning hours.¹⁰ On the following day, Montagu sent a copy of the deposition to the Governor of Rhode Island, suggesting that Wanton ". . . use such methods as you shall think proper, for apprehending and bringing the offenders to Justice."¹¹ The next day, Governor Wanton responded by sending the Admiral three depositions which were sworn before Darius Sessions. Wanton noted that the Dickinson account differed significantly from the others. Wanton also sent along a copy of his proclamation, with the assurance that the ". . . utmost and continued exertions of the officers of this colony [would be utilized] to detect and bring to justice the perpetrators of this violent outrage."¹²

¹⁰ John Montagu's Journal, 10 June, 1772, Edwards, Gaspee Papers, Rhode Island Historical Society. The next day, Dickinson would give another deposition before Governor Thomas Hutchinson. Deposition of William Dickinson enclosed in Montagu to Stephens, 12 June, 1772, Public Record Office, Admiral's Dispatches, 1:484, Library of Congress transcript.

¹¹ John Montagu to Joseph Wanton, Boston, 11 June, 1772, Barlett. *Records*, VII, 82.

¹² Joseph Wanton to John Montagu. Newport, 12 June, 1772, Bartlett, *Records*, VII, 85.

In the interim, Lieutenant Dudingston who was in Pawtuxet, had written to Admiral Montagu offering his version of the attack on his person and vessel. Since Montagu could discern no apparent difference between Dudingston's statement and the affidavits of his crewmen, he did not agree with Wanton that there was a noticeable discrepancy between them. Montagu naturally wanted to collect as much evidence as he possibly could, and he was probably pleased with that segment of Dudingston's letter which identified the conspirators as ". . . merchants and masters of vessels." •

The suggestion that the two surgeons who dressed Dudingston's wounds was useful evidence also, since there were considerably fewer surgeons than merchants in Providence. Montagu had his own sources of information in addition to the few facts that he could glean from the lieutenant. He wrote Wanton that

It will not bear a dispute but that they [the attackers] belonged to Providence, as they were heard by four or five gentlemen that were in the town, and are now here, beating the drum to arms, to raise a body of people to destroy the King's schooner.¹⁴

Admittedly these were sparse bits of evidence, but on June 15, Montagu passed them on to the Governor for his consideration. Wanton never thanked Montagu for his assiduous detective work, and apparently chose instead to ignore this letter.¹⁵

¹³ There does not appear to be any fundamental difference between the depositions.

¹⁴ John Montagu to Joseph Wanton. 15 June, 1772, Bartlett, *Records*, VII, 88.

¹⁵ In the course of my research, I have not found a reply by Wanton to Montagu's letter of June 15, 1772.

Whereas Governor Wanton had not proved cooperative, Captain John Linzee of the *Beaver* aided Montagu in every possible way. Linzee was a youthful, rather dignified officer, who might have found his Rhode Island assignment dull compared with the cosmopolitan air that Boston afforded a young British officer away from home. Merchant John Rowe was frequently dinner host to both Montagu and Linzee. But there were other reasons that made Boston appealing, aside from socializing with wealthy colonial merchants. While frequenting the home of prominent local merchant Ralph Inman, Linzee's attention had been arrested by the merchant's daughter (Sukey), and she was equally enamored of him. Before summer's end Miss Inman would sail to England with the captain as Mrs. Linzee.¹⁶

Along with Sukey Inman, the Gaspee affair must have competed for Linzee's time. He first heard of the destruction on the morning of June 10, while he was still anchored in the Sakonnet River where he had gone after leaving Dudingston the morning before. At about 9:00 a.m. on June 10, he received a dispatch from Charles Dudley apprising him of the distressing news. He quickly weighed anchor, headed for the Bay, and sailed to Namquit Point to inspect the vessel's remains. By noon he had visited with Dudingston at Pawtuxet, after which he took on board the waiting crew members.

¹⁶ Anne Rowe Cunningham, ed., *Letters and Diary of John Rowe*, p. 226. Rowe makes mention (diary entry for March 27, 1772) of several dinner engagements at his home where he entertained Linzee. For a portrait of Linzee see the Diary, p. 222, 226. *Pennsylvania Chronicle and Universal Advertiser*, 19 September, 1772.

He had earlier made inquiry of the *Gaspee's* stores which were then in the custody of the colony. By the end of June he had acquired possession of the salvaged stores, including guns and an anchor; by early August, under orders from Montagu, he had transported them to Boston for later reshipment to Halifax.¹⁷ Aside from taking charge of the *Gaspee's* stores Captain Linzee assumed custody of Aaron Briggs, the alleged participant in the raid, in whom Governor Wanton had shown keen interest.

With Lieutenant Dudingston providing his interpretation of the events of June 9 and 10, and with Captain Linzee tending to matters pertaining to the *Gaspee*, Admiral Montagu was also assisted by Collector Charles Dudley and Governor Thomas Hutchinson who, more than likely, provided him with other data which he might find useful in reporting to his superiors in England.

Charles Dudley was the perfect "informant." He thought it his duty and his delight to keep superiors and colleagues abreast of timely happenings in Newport. He was a meddlesome official with a keen and imaginative mind. He absorbed a great deal of information—fact and rumor—from press and persons, and he speculated at length about his data. Understandably, he was one of the first to learn of the burning of the *Gaspee* and the attack upon Dudingston. Apparently, he was also one of the first people to give serious

¹⁷ Admiral John Montagu's Journal, 17 August, 1772, and Log of the sloop *Beaver*, 30 June, 1772, Edwards, *Gaspee Papers*, Rhode Island Historical Society.

thought to the consequences of Dudingston's surveillance of Rhode Island's commerce. After all, Dudley had experienced first hand the wrath which Rhode Islanders reserved for unduly enthusiastic customs officers.

As soon as he heard the news, he sent a messenger to Inform Linzee. According to Montagu, Dudley promised to ". . . gain Intelligence of the people concerned in the boarding & burning the Schooner, and advise me."¹⁸ In Dudley's several communications he strove to convey the idea to Montagu that the burning was not some sudden and spontaneous uprising against the customs service and officers who assisted the service. Weeks before, Dudley had been convinced he had picked up gleanings of what might happen. He read between the lines of the local paper, the *Newport Mercury*.

One article to which the Collector alluded was printed in the *Mercury's* issue of February 24. The paper reported that the King's man-of-war in the Bay was ". . . robbing some of his poorest subjects, who are scarcely able to procure the common necessities of life; when those men of war might be so well employed, especially at this time, against Spain. . . ." ¹⁹ But what aroused Dudley's suspicions was a warning to Rhode Islanders:

¹⁸ Admiral John Montagu's Journal, 13 June, 1772, Edwards, Gaspee Papers, Rhode Island Historical Society.

¹⁹ *Pennsylvania Gazette*, 12 March, 1772. The February 24 issue of the *Newport Mercury* is not in the Newport Historical Society. Transcripts of the paper at the Western Reserve Historical Society do not include this issue either. This excerpt reprinted in the *Pennsylvania Gazette* was probably the article which Dudley had in mind.

Americans, take CARE of your PROPERTY! For, according to present appearances, you may soon expect to have your firewood SEIZED, if it be transported by water from one place to another without clearing and entering. The above schooner has a number of swivels and carriage guns.²⁰

Dudley construed the general tenor of the article to be a threat to the crown. It was from articles such as these that he concluded that the burning of the *Gaspee* was planned in advance.

In a letter to Admiral Montagu dated July 23, 1772, Dudley set forth his premise that the *Gaspee* attack was not a spur-of-the-moment decision but a carefully hatched plot.²¹ He offered the paragraphs in the *Newport Mercury* to corroborate this belief, while continuing to argue his point:

The next Publick Step, was a Memorial or Petition from the Merchants in Providence, first laid before the Superior Court of judicature then sitting that Town, and Afterwards before the Governor; praying, that the Commander of an armed Vessell then cruizing in the Bay; should be called upon by the Civil Authority to know by what Power he was Authorised to Search Ships and other Vessells on the high Seas: tho' it was Notorious that the armed Vessell in question Sailed under British Colours, and belonged to His Brittanic Majesty: what followed in consequence of this Memorial I shall forbear to mention, as I have understood that whole Transaction has already canvass'd between You and the Chief Magistrate.²²

Convinced that these two proofs—the newspaper article and the memorial—indicated that a plan had been put forth months in advance, he

²⁰*Ibid.*

²¹ Charles Dudley to Rear Admiral Montagu, Rhode Island, 23 July, 1772, enclosed in John Montagu to Philip Stephens, Boston, 2 September, 1772, Public Record Office, Admiral's Dispatches, 1:484, Library of Congress transcript.

²²*Ibid.*

warned the Admiral that if there were to be any prosecutions at all they would come about ". . . not under the Influence of a Governor and Company of Rhode Island: but under the high Authority of a Brttish Senate. . . ." ²³ Despite the Governor's proclamation, Dudley did not believe Wanton would do much more than that. He commented upon the popular nature of Rhode Island government which he said ". . . bears no resemblance to any other Government under the Crown of England." ²⁴ This, he concluded, was the factor which proved the correctness of his "hunch."

Governor Hutchinson's influence upon the thinking of Admiral Montagu is more difficult to determine. Hutchinson probably learned of the *Gaspee's* destruction from Admiral Montagu. As he pondered the implications and possible effects of the attack he likely passed on some of his opinions to the Admiral. But his evaluation of Governor Joseph Wanton was somewhat different than Montagu's. Hutchinson viewed Wanton as a man who had the capacity to do what was correct, but who was hampered by the popular nature of his government:

I have known the present governor of the Colony many years and used to esteem him as the most fit person among them for the Post but the constitution is such that he is not capable of acting his own judgement and must be subordinate to the desires of the illicit traders. . . . ²⁵

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Thomas Hutchinson to Secretary of State, the Earl of Hillsborough, Boston. 12 June, 1772, Colonial Office 5:761, Massachusetts By, 1772, folio 215, Edwards, Gaspee Papers, Rhode Island Historical Society.

As an elected official his tenure in office was subject to what Hutchinson considered the whim of the electorate. Montagu was apparently influenced more by his own contacts with Wanton than by Hutchinson's sympathetic appraisal. But much of what Hutchinson thought must have been considered by the Admiral.²⁶

Although both Hutchinson and Charles Dudley took the time to pen their own thoughts to Lord Hillsborough, their views were naturally reflected in the letters which Admiral Montagu sent on to his superiors, the Lords of the Admiralty in London. Due to his high position, policy makers in England depended upon the Admiral for those facts which he might uncover about the *Gaspee* affair. His attitudes and prejudices, and those which he incorporated as his own, likewise colored the thinking of the ministry, and would provide the foundation for the crown's policy toward Rhode Island's late affair.

²⁶ In the course of my research, I have not found any letters between Admiral Montagu and Governor Hutchinson.

CHAPTER VI

THE BRITISH GOVERNMENT RESPONDS

On June 12 from his Boston headquarters Admiral Montagu sent three letters to London via Captain Squire of the *Bonetta*, on what was routinely a five-week voyage at this season of the year.¹ One letter was for his immediate superiors in England, the Lords of the Admiralty; the second was for the head of the ministry, Lord North; the third was addressed to the Secretary of State for the colonies, the Earl of Hillsborough, the man who would ultimately bear the responsibility for finding a solution to the Rhode Island problem.

Hillsborough was one of three secretaries of state. In theory the powers of the state department were not divisible; any number of secretaries of state, serving simultaneously, could perform the same duties. For years there had been two principal secretaries of state, one for the Northern Department which included Holland, Scandinavia, Poland and Russia, and one for the Southern Department, comprising France, Switzerland, Italy, Spain and Portugal, Turkey, Ireland, the Channel Islands and the colonies. While foreign affairs were thus divided, domestic concerns were among the duties

¹ John Montagu's Journal, 12 June, 1772, Papers Relating to the Gaspee. Compiled by Walter A. Edwards, Rhode Island Historical Society.

of both secretaries.²

Then in 1768 a third post was created within the state department, the secretary of state for the colonies. It was decided that exclusive control of colonial affairs by one secretary was necessary, since the Southern Department was over-burdened.³ The Colonial Department was housed in the old Treasury building near the offices of the Board of Trade, along with most other government offices flanking Whitehall, the main thoroughfare between Trafalgar Square and the House of Parliament.⁴

The Colonial Secretary was assisted by an impressive business staff. However his most important subordinates included two undersecretaries. They were not really civil servants since they did not come directly under the control of the state. They were appointed by the secretaries themselves, who also paid their salaries. The staff might be retained from one successor to another. The continuity of their tenure often made the undersecretaries better informed than their novice superiors. Many of them were members of Parliament, or had served in a secretarial capacity for some other department, perhaps the Admiralty, Treasury, or Board of Trade.⁵ They were extremely knowledgeable; officials.

² Mark A. Thomson, *The Secretaries of State, 1681-1782* (Oxford: Clarendon Press, 1932), pp. 1-3.

³ *Ibid.*, pp. 55-56.

⁴ B. D. Bargar, *Lord Dartmouth and the American Revolution* (Columbia: The University of South Carolina Press, 1965), p. 63.

⁵ Franklin D. Wickwire, *British Subministers and Colonial America, 1763-1783* (Princeton: Princeton University Press, 1966), pp. 20-21. Thomson, *The Secretaries of State*, pp. 130, 133, 138.

John Pownall was the senior undersecretary in the colonial office. He had served at the Board of Trade, coming to the Colonial Department in 1768. As first undersecretary, he enjoyed more power and privileges than the junior member, since seniority was an important factor in the bureaucratic structure of eighteenth-century English government.⁶ In 1770 Pownall exercised his influence and position to obtain the appointment of William Knox as junior undersecretary.⁷ The secretaries realized the importance of the subministers and gave weight to the attitudes and ideas which they voiced concerning colonial matters.

Wills Hill, Marquis of Downshire and Second Viscount Hillsborough (1718-1793) was the first appointee to the new post of Secretary of State for the Colonies in 1768. A former prime minister, Sir Robert Walpole, had once described him as a "young man of great honour and merit."⁸ In 1751 at the age of thirty-three, he was elevated to Irish peerage, becoming Viscount Kilwarlin and Earl of Hillsborough. In 1756 he was also created a British peer when he became Lord Hardwick, Baron of Hardwick, with the privilege of taking his seat in the House of Lords. In 1763 he became President

⁶ Wickwire, *British Subministers*. P. 69.

⁷ *Ibid.*, p 74.

⁸ George F. R. Barker, "Wills Hill", *Dictionary of National Biography*, IX, 878.

of the Board of Trade, but resigned that position in 1765, as a result of a change of ministries. When the President of the Board of Trade resigned that position in 1768, Hillsborough became Secretary of State for the Colonies and President of the Board of Trade concurrently. His predecessors would also hold both offices until this procedure was discontinued in 1779.⁹

The *Bonetta* arrived in England on July 15, bringing Montagu's letter to the Admiralty. Along with its enclosure, it was forwarded to the Colonial Secretary by the Lords of the Admiralty even though Hillsborough and Lord North were in receipt of their own copies.¹⁰ Expectedly the crown officials received the news of the *Gaspee's* destruction and Dudingston's wounding with great shock. Pownall described it as ". . . five times the magnitude of the Stamp Act."¹¹

Assisting them in their deliberations, the Colonial Department officials had access to a considerable amount of *Gaspee* correspondence which dated back to March, 1772. Admiral Montagu had first written Philip Stephens

⁹ Thomson, *The Secretaries of State*, p. 56. Barker, "Wills Hill," *Dictionary of National Biography*, IX, 878-879.

¹⁰ Lords of the Admiralty to Secretary of State, the Earl of Hillsborough, Admiralty Office, 15 July, 1772. America & West Indies, folio 119, 58(a), Admiralty, Edwards, Gaspee Papers, Rhode Island Historical Society.

¹¹ Henry Marchant commented upon the reaction in England when the news of the *Gaspee* burning arrived there. Henry Marchant to Benjamin Franklin, Newport, 21 November, 1772, Newport Historical Society. John Pownall to [the Earl of Dartmouth], 29 August, 1772. *Historical Manuscripts Commission*, Fourteenth Report, Appendix, Part X, *The Manuscripts of the Earl of Dartmouth*, Vol. II: *American Papers*, p. 91.

on April 18, 1772, regarding the problem of the royal navy in Rhode Island. He enclosed the exchange of letters which had transpired between Dudingston and Wanton during March. Thus it was through Stephens that Hillsborough's office became aware of the initial problem in Rhode Island between the royal navy, the customs service, and the local merchants.

Depositions and Montagu's letter provided the details: Lieutenant William Dudingston had been assigned to Rhode Island in March upon orders from the Admiralty. A group of merchants who were displeased with the lieutenant's abridgement of their trade destroyed his vessel, the *Gaspee*, and wounded Dudingston, indeed endangering his life. While Montagu forcefully urged Rhode Island's Governor, Joseph Wanton, to make arrests he wrote in vain that because ". . . the Inhabitants of Rhode Island in general, are a set of lawless and Piratical people & whose whole business is to smuggle & defraud the King of his Duties, I cannot expect much satisfaction from that Letter."¹² He closed his letter offering praise for Dudingston who ". . . has faithfully & like a good officer most strictly discharged his Duty."¹³

Governor Wanton had first written to Hillsborough in May, 1772, enumerating the abuses to which the colony had been subjected. His account

¹² Montagu to Lord North, Boston, in New England, 12 June, 1772, Colonial Office, 5:145, 35(d), duplicate, Edwards, Gaspee Papers, Rhode Island Historical Society. J. Montagu to Philip Stephens, 12 June, 1772, Admiral's Dispatches, 1:-484, Library of Congress transcript.

¹³ John Montagu to Lord North, Boston, in New England, 12 June, 1772, Colonial Office, 5:145, 35(d), duplicate, Edwards, Gaspee Papers, Rhode Island Historical Society.

was noticeably different from Montagu's; Wanton categorically denied that he had interfered with the customs service, as Montagu had charged. The Governor contended that he merely wanted to investigate a charge made by some petitioning Providence merchants who had accused Dudingston of trade harassment in March. Furthermore he wanted to clarify whether Dudingston had the proper credentials to act as a customs officer in Rhode Island. Wanton accused Dudingston of treating the local merchants with contempt, even going so far as making illegal seizures and taking them out of the colony for condemnation.

According to Wanton, who cited an act of George III for his proof, trials must be where the seizure occurred (on this count he was mistaken). Finally, as to the charge that there were people interested in fitting out an armed schooner to deal with the troublesome officers, Wanton replied that the allegations were made by enemies of Rhode Island, "... a malicious representation, calculated, by the enemies of our happy constitution, to injure the colony, and bring upon the inhabitants his Majesty's displeasure."¹⁴

Although Montagu and Wanton differed in their interpretation of events prior to June 9, Wanton's letter of June 16 to Hillsborough corroborated much of what Montagu had written concerning the attack on the vessel. However he wasted no kind words on Dudingston. The Governor complained of

¹⁴ The Governor of Rhode Island to the Earl of Hillsborough, Newport, R.I., 20 May, 1772, John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England* (Providence: 1857), VII, 68.

continued abuses of the trade laws by the officers of the royal navy and reiterated the complaint that vessels were taken to Boston for trial, thus circumventing Rhode Island's vice-admiralty court.¹⁵

Governor Thomas Hutchinson was also in correspondence with Lord Hillsborough. Hutchinson asserted that the *Gaspee* burning was inevitable, given the level of feelings between the navy and the local inhabitants. Now he feared for Massachusetts Bay as well:

If some measures are not taken in England in consequence of so flagrant an insult upon the King's authority I fear it will encourage the neighbouring Colonies to persevere in their opposition to the Laws of Trade and to be guilty of the like & greater Acts of Violence.

As the Town of Providence joins to this Province and is less than 50 miles from this Town and the flame may spread here I hope your Lordship will not think that I go out of my line in this information.¹⁶

Hutchinson's warning was not new to Hillsborough. Along with many other British officials the Secretary believed that colonial courts were not impartial toward British officers charged with capital crimes. This belief persisted despite the exoneration of Captain Preston and most of his soldiers by a Boston jury.

Hutchinson's remarks were anticlimactic, for Hillsborough did not intend to treat the Rhode Islanders affront with impunity. He submitted the

¹⁵ Governor Wanton to the Earl of Hillsborough, 16 June, 1772, Bartlett, *Records*, VII, 91.

¹⁶ Thomas Hutchinson to Secretary of State, the Earl of Hillsborough, Boston, 12 June, 1772, Colonial Office, 5:761 Massachusetts Bay, 1772, folio 215, No. 27, Edwards, *Gaspee Papers*, Rhode Island Historical Society.

Rhode Island business to the Cabinet's consideration on July 30. The mode of legal procedure for indicting and trying the offenders was one of the important questions with which he confronted his colleagues. Since he doubted the likelihood of a fair trial in Rhode Island, transporting the suspects to England for legal proceedings appeared to be the most efficient solution. Far from being a new suggestion, this idea had been considered as early as 1769 as one way of handling those Boston malcontents who had disseminated a circular letter urging other colonies to defy the newly passed Townshend duties.¹⁷ Now in July, 1772, Hillsborough was offering a recently passed statute of Parliament for the Cabinet's consideration, one which he thought might be effectively utilized in bringing about his objective.

Hillsborough alluded to "An Act for the better securing and preserving his Majesty's dock yards, magazines, ships, ammunition and stores." Parliament's motivation in sponsoring such a bill resulted from a case of arson in one of the King's Portsmouth storehouses in southern England.¹⁸ Introduced in Commons on March 23, 1772, and subsequently read and concurred for the third time on April 8, the bill was taken to the House of Lords, where it received final approval on April 15 and the King's signature the following day.¹⁹

¹⁷ The History, Debates, and Proceedings of Both Houses of Parliament (London: Printed for J. Debrett, 1792), V, 22.

¹⁸ Thomas Hutchinson, *The History of the Colony and Province of Massachusetts Bay*, Lawrence S. Mayo, ed. (Cambridge: Harvard University Press, 1936), III, n., 262.

¹⁹ Great Britain, Parliament, *The Journal of the House of Commons from November the 13th, 1770 in the Eleventh Year of the Reign of King George the Third to November the 17th in the Thirteenth Year of the Reign of King George Third*, XXXIII, 608, 675, 696, 701.

The statute provided that any person convicted of the felony of or indirect involvement in destroying or setting fire to "... ships of war, arsenals, magazines, dockyards, rope yards, victualling offices, military, naval, and victualling stores, and the places where such stores are kept or deposited ..." ²⁰ was to be punished by death without benefit of clergy. The act applied to all vessels, "whether the said ships or vessels of war be on float or building, or repairing. ..." ²¹ Another important provision stated that anyone who should commit such an act,

... may be indicted and tried for the same, either in any shire or county within this realm, in like manner and form, as if such offence had been committed within the said shire or county, or in such island, country, or place, where such offence shall have been actually committed. . . ²²

It was Hillsborough's belief that the people who burned the *Gaspee* could be tried under the Dockyards Act, since the craft had been destroyed by fire. Suspects might be indicted or tried in "... any shire or county within this realm." ²³ Therefore, under the provisions of the act, offenders

²⁰ "An Act for the better securing and preserving his Majesty's dockyards, magazines, ships, ammunition and stores," 1772, 12 George 111, c. 24, Danby Pickering, ed., *The Statutes at Large from Magna Charta to the End of the Eleventh Parliament*, XXIX, 63.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

could be indicted and tried in England. While it was an ingenious idea, a newly passed act of Parliament could not serve as sufficient precedent to try Americans in England. Realizing this, Hillsborough and his colleagues at the cabinet meeting of July 30 decided to refer the applicability of the Dockyards Act to the Attorney and Solicitor General, Edward Thurlow (First Baron Thurlow) and Alexander Wedderburn (First Baron Loughborough, First Earl of Rosslyn) for further consideration.²⁴

The collective wisdom of the cabinet indicated that instructions be sent to both Governor Wanton and Admiral Montagu, bearing upon prosecution of persons in Rhode Island. Secretary to the Admiralty Philip Stephens was in receipt of a more recent dispatch from Montagu which he forwarded to Hillsborough's office. The Admiral had sent two letters; one was addressed to Montagu from Dudingston; the other written by William Checkley, Providence collector, to the Commissioners of Customs in Boston. Dudingston's letter recounted his version of the *Gaspee* incident; Checkley's expressed fears for Dudingston's safety, since the high sheriff had sought the lieutenant's arrest.²⁵ Both letters provided the cabinet with additional information.²⁵

²⁴ Cabinet Minutes, 1772, 30 July, St. James, Copy, *Historical Manuscripts Commission*, Fourteenth Report, Appendix, Part X, *The Manuscripts of the Earl of Dartmouth*, II: *American Papers*, p. 85.

²⁵ J. Montagu to Philip Stephens, 30 June, 1772, with enclosures: Dudingston to Montagu, 12 June, 1772, copy, extract of letter to Commissioners of Customs, William Checkley to Commissioners of Customs, Providence, 12 June, 1772, Admiral's Dispatches, Public Record Office, 1:484, Library of Congress transcript.

Hillsborough's influence upon his colleagues, and effectiveness of his proposals were hampered by his announced resignation from office on August 1. The Earl had been the victim of political machinations. The source of his troubles centered around the policy for the western territory of North America. A new western colony, Vandalia, with a large land grant in trans-Appalachia, was proposed in 1769.²⁶ Using his influence as President of the Board of Trade, Hillsborough helped bring about the defeat of the proposal; this angered the Secretary's political adversaries, many of whom, held shares in the Vandalia enterprise.²⁷ They attempted to force from office both the Secretary and the Prime Minister, Lord North. They succeeded in removing Hillsborough, who submitted his resignation August 1, but North would remain as head of the ministry until 1782.²⁸

About a week after his announced resignation which would not become effective until August 14, Hillsborough began laying the groundwork for utilizing the Dockyards Act in Rhode Island. On August 17, in a letter to the Governor and Company of Rhode Island, he chastised Wanton for his two impertinent letters to Lieutenant Dudingston on March 22 and 23. Hillsborough

²⁶ Ray Allen Billington, *Westward Expansion: A History of the American Frontier* (New York: The Macmillan Co., 1960), p. 150.

²⁷ *Ibid.*, pp. 150-51.

²⁸ Thompson, *Secretaries of State*, p. 58. Lord Barrington to Gage, Cavendish Square, 2 September, 1772, Gage Papers, English Services, XXIII, William L. Clements Library, University of Michigan. Lord North to the Earl of Dartmouth, Bushy Park, 3 August, 1772, *Historical Manuscripts Commission*, Fourteenth Report, Appendix, Part X. *Dartmouth Manuscripts*, Vol. II: *American Papers*, p 86.

had no doubts in his own mind as to where the blame lay. He had no sympathy for Rhode Islanders and their charges against the royal navy and the customs service. He urged the Governor to endeavor to bring the arsonists and assassins to light.

Hillsborough did not view Wanton's proclamation as proof of the Governor's intention to assist the crown:

The King does nor consider the Issuing a Proclamation, unaccompanied with any special or particular Directions to the Civil Magistrates in the neighborhood of the place where this most daring Insult was committed, as any Proof of that Zeal & Activity for the Discovery of the offenders of which Govr. Wanton claims the merit.²⁹

His most serious insinuation attempted to implicate Wanton and the civil officials in the *Gaspee's* fate. He told Wanton that the large number of people who had participated in the attack precluded a secret occurrence. He suggested that the civil magistrates must have known what was happening on the night the attackers prepared to destroy the schooner.³⁰

Because, in Hillsborough's opinion the colony's officials could not be depended upon, the Secretary had decided to detail Admiral Montagu ". . . with Directions to use his utmost Endeavour to detect & prosecute the persons concerned. . .with Authority to promise a Reward of £500. . . ." ³¹

²⁹ The Earl of Hillsborough to the Governor and Company of Rhode Island, Whitehall, 7 August, 1772, Colonial Office, 5:1301, folio 452. Edwards, Gaspee Papers, Rhode Island Historical Society.

³⁰ *Ibid.*

³¹ *Ibid.*

Finally, to make his position unmistakably clear, he enclosed a copy of the Dockyards Act, maintaining that

... it is referred to His Majesty's Attorney & Solicitor General to consider whether any of the Persons concerned in the burning of the Gaspee Schooner, who have been or may be arrested & committed to Custody in America, may be tried in England, or where else they ought to be tried, and for what Crime they should in the present Case be indicted.³²

Although Hillsborough took notice of Wanton's earlier complaints, he dismissed the charges because ". . . at present they rest upon several Assertions, without a Single Fact adduced to support that Assertion" He did agree to lay Wanton's grievances before the Lords of the Admiralty.³³

From the choice of the Dockyards Act to the suggestion that Admiral Montagu would be empowered to ". . . detect and prosecute the persons concerned,"³⁴ the tenor of Hillsborough's approach to the Rhode Islanders was threatening. While such actions would expose the Colonial office to charges of intimidation, they indicate the severity with which the Secretary viewed the *Gaspee* incident. Strong feelings were also evident in his instructions to Admiral Montagu which were first sent to the Lords of the Admiralty. He cautioned:

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

It is the King's further Command that your Lordships should direct Rear Admiral Montagu to repair himself to Rhode Island on board one of His Majesty's Ships of War under his Command, and that you do instruct him to use his utmost endeavours to discover & bring to justice the perpetrators of the daring & outrageous violence & insult of His Majesty's Authority which have been committal in that Colony; & in order that he may be enabled to watch more closely than ever & prevent the contraband trade carried on there, it is His Majesty's Pleasure that a larger force, should be placed on that station.³⁵

Because he considered Governor Wanton's opinions of Dudingston's activities "... general assertions without the evidence of a single fact . . ." Hillsborough's only advice to the Lords was that they consider seriously whether or not they intended to instruct Montagu on this account, as indeed, the charges against Dudingston may have been a fiction of the Governor's imagination. In an attempt to strengthen the position of the Admiral even more, and further discredit the Governor, Hillsborough authorized Montagu to offer a £500 reward to any person or persons "... who shall discover any one or more of the offenders so as they may be apprehended & prosecuted to conviction. . . ." ³⁶ Upon Montagu's request, the money for the reward would be provided by General Thomas Gage in New York.³⁷

As Instructed, the Lords of the Admiralty deliberated Wanton's charges and arrived at a decision:

³⁵ The Earl of Hillsborough to Lords of the Admiralty, 7 August, 1772, Public Record Office, Colonial Office, 5:250, Out Letters, Secretary of State for the Colonies, Library of Congress transcript.

³⁶ *Ibid.*

³⁷ The Earl of Hillsborough to Thomas Gage, 7 August, 1772, Edwin Carter, ed., *The Correspondence of General Thomas Gage with the Secretaries of State, and with the War Office and Treasury, 1763-1775* (New Haven: Yale University Press, 1933), II. 146.

The Earl of Hillsborough having in his aforementioned Letter, thought it necessary to acquaint Us, that in several Letters which he had lately received from the Governor of Rhode Island, he complains with great acrimony that the Authority of their Government has been treated with contempt and Disrespect by the Commanders & Officers of His Majesty's Ships and Vessels and that they give great interruption to the Internal Commerce of the Colony by subjecting the small Freight-Boats plying between the several Towns, with the Produce thereof, to Very great inconveniences and thereby enhancing the Price & creating a Scarcity of the necessaries of Life; observing however, that those are general assertions, without the Evidence of a single Fact; We recommend it strongly to you to make a strict Inquiry into what is alleged, to give such Orders to the Captains and Officers under your Command as may be necessary to prevent the like in the future.³⁸

The Hillsborough or Dockyards plan was proof that the Secretary did not consider Wanton trustworthy, and that Rhode Island courts could not be depended upon to produce convictions. For this reason, Admiral Montagu would be armed with an enlarged fleet of vessels and a reward of £500, the understanding being that where naval power did not intimidate the Rhode Islanders into submission to and cooperation with the crown, the handsome reward might move a mercenary citizen or two to assist Government.³⁹

Even though the Lords of the Admiralty had been directed to dispatch the instructions to America, "as soon as may be" the letters dated August 7,

³⁸ Lords of the Admiralty to John Montagu, 12 August, 1772, Admiralty, Sec. Out Letters, 98, folio 47-49, Edwards, Gaspee Papers, Rhode Island Historical Society.

³⁹ The Hillsborough plan was highly irregular. To instruct Admiral Montagu to enter Rhode Island for the purpose of doing what Rhode Island magistrates might refuse to do, was not an acceptable solution, despite the seriousness of the offence and the reluctance of the Rhode Island government to take the responsibility for uncovering the offenders.

⁴⁰ The Earl of Hillsborough to Lords of the Admiralty, 7 August, 1772, Public Records Office, Colonial Office, 5:250, Out Letters, Secretary of State for the Colonies, Library of Congress transcript.

9, and 12 were still in the office of the Admiralty on August 20.⁴¹ The Colonial Secretary's pending resignation may have been a factor in the reluctance of the ministry to act quickly on the Dockyards Act scheme. Besides, the Attorney and Solicitor General had not yet handed down their opinion. This finally came on August 10.⁴²

Whether the *Gaspee* burning was a felony or a treason was one of the legal distinctions which the Attorney and Solicitor General had considered. The legal basis for the charge of treason dated back to the fourteenth-century statute of Edward III in 1350.⁴³ The Act, entitled "A Declaration which offences shall be adjudged treason" (25 Edward III, St. 5, c. 2) attempted to define treason as distinct from felony. Treason was defined to mean any attack upon the person of the King or members of the royal family or household, or levying war against the king.

⁴¹ These letters would also be recalled and cancelled on August 20. Cabinet Minutes, 20 August, 1772, St. James, *Historical Manuscripts Commission*. Fourteenth Report, Appendix, Part X, *Dartmouth Manuscripts*, Vol. II: American Papers, p, 88.

⁴² The opinion was rendered on August 10, 1772. Edward Thurlow and Alexander Wedderburn to the Right Honorable the Earl of Hillsborough, Secretary of State for the Colonies and First Lord of the Treasury and Plantations, Lincoln's Inn, 10 August, 1772, Colonial Office, 5:159, No. 93, Copy, Original Mislaid, Edwards, *Gaspee Papers*, Rhode Island Historical Society.

⁴³ W. S. Holdsworth, *A History of English Law* (London: Methuen & Co., 1903-[1966]). III, 289. Bradley Chapin, *The American Law of Treason: Revolutionary and Early National Origins* (Seattle: University of Washington Press, 1964), p. 3.

Treason pertaining to offenses against the king was known as high treason. Most other crimes were classified as felonies.⁴⁴ This statute of Edward III authorized the crown lawyers to determine whether a crime be a felony or a treason, where the classification was in doubt.⁴⁴ On two other occasions in 1381, and again in 1397, the treason statute of Edward III was expanded to include riots and other serious disturbances by villains.⁴⁶

The Attorney and Solicitor General finally declared that the Dockyards Act "... extends only to such Ships as are burnt or otherwise destroy'd in some Dock Yard and not to Ships upon actual Service."⁴⁷ But the act said something else. It Included within its authority all ships or vessels of war "... on float or building or repairing. ..." ⁴⁸ Therefore it would appear that the act could have applied to vessels already in service. The Attorney and Solicitor General did not give reasons for their interpretations of the Act. But by setting aside its applicability in the Rhode Island instance,

⁴⁴ A Declaration which offences shall be adjured treason, 1350," 25 Edward III, St. 5, c. 2, Danby Pickering, ed., *The Statutes at Large* (London: Joseph Bentham, printer to the University, 1762), 11, 51-53.

⁴⁵ *Ibid.*

⁴⁶ Holdsworth, *English Law*, II, 450.

⁴⁷ Edward Thurlow and Alexander Wedderburn to the Right Honorable the Earl of Hillsborough, Secretary of State for the Colonies and First Lord of the Treasury and Plantations, Lincoln's Inn, 10 August. 1772. Colonial Office, 5:159, No. 93, Copy original Mislay'd, Edwards, Gaspee Papers, Rhode Island Historical Society.

⁴⁸ *Ibid.*

they were discounting the charge of felony. Nor would they designate the burning, piracy and plunder. Instead they labeled it a crime of high treason, that is, levying war against the king.⁴⁹

Hillsborough's desire to bring the offenders to England to stand trial was the primary reason for his interest in the Dockyards Act. The Act which provided for such trials, stated:

And be it further enacted by the authority aforesaid, That any person who shall commit any of the offences before mentioned, in any place out of this realm, may be indicted and tried for the same, either in any shire or county within this realm. In like manner and form, as if such offence had been committed within the said shire or county, or in such island, country, or place, where such offence shall have been actually committed, as his Majesty, his heirs, or successors, may deem expedient for bringing such offender to justice; and law, usage, or custom notwithstanding.⁵⁰

Since the Act referred only to felonies, some other legal basis would have to be employed if Hillsborough hoped to bring the offenders to England on a charge of treason. Thurlow and Wedderburn did leave the way open to further pursuance of this plan, when they ruled "... that the offenders may be indicted of the High Treason either here or in Rhode Island taking that assertion of the Governor to be true that the Ship was stationed within the Body of some County in that Province."⁵¹

⁴⁹ *Ibid.*

⁵⁰ An Act for the better securing and preserving his Majesty's dock yards. . . ." 1772, 12 George III. c. 24. Pickering, ed.. *Statutes at Large*, XXIX, 63.

⁵¹ Edward Thurlow and Alexander Wedderburn to the Earl of Hillsborough, Lincoln's Inn, 10 August. 1772. Colonial Office. 5:159, No. 93, Copy original Mislaid, Edwards, Gaspee Papers, Rhode Island Historical Society.

While the statute of Edward III defined treason, it did not provide for the manner of trial. A statute passed under Henry VIII in 1542, however, did offer the necessary legal process. British officials first considered the possibility of colonial treason at the time of the passage of the Townshend duties. In a circular letter of February, 1768, the Massachusetts legislature had urged other colonial assemblies to study the question of the constitutionality of the newly passed acts of Parliament. Because the Massachusetts assembly refused to remit the circular letter, Parliament had dissolved the assembly. In retaliation, Boston merchants had instituted non-importation.⁵²

Thus at a time when they were thinking seriously about the possibility of using treason charges to deal with the truculent Bostonians, crown officials gave careful consideration to a statute of Henry VIII. It was entitled, "An Act for the trial of treasons committed out of the King's Dominions" (35 Henry VIII, c. 2, 1549). Crimes of treason

... perpetrated or committed, by any person or persons out of this realm of England, shall be from henceforth of, heard and determined before the King's justices of his bench for pleas to be holden before himself, by good and lawful men of the same shire where the said bench shall sit and be kept. . . .⁵³

In addition to providing for trials out of the vicinage, trial by commission

⁵² Chapin, *The American Law of Treason*, p. 12.

⁵³ "An Act for the trial of treasons committed out of our of the King's dominions," 1542, 35 Henry VIII, c. 2, Pickering, ed., *Statutes at Large*. V. 199.

was another alternative to the traditional jury system. In lieu of trials ". . . before the King's justices of his bench . . . by good and lawful men of the same shire . . ." ⁵⁴ the case might be heard and determined,

. . . before such commissioners, and in such shire of the realm, as shall be assigned by the King's majesty's commission, and by good and lawful men of the same shire, in like manner and form to all intents and purposes, as if such treasons, misprisons of treasons, or concealments of treasons had been done, perpetrated and committed within the same shire where they shall be so enquired of, heard, and determined as if aforesaid.⁵⁵

Because the statute had been passed to provide for the prosecution of Irish criminals in England, ⁵⁶ Englishmen were exempt from it:

. . . That if any of the peers of this realm shall happen to be indicted of any such treasons, or other offences aforesaid, by the authority of this act, that then, after such indictment, they shall have their trial by their peers, in such like manner and form as hath heretofore been accustomed.⁵⁷

Apparently the crown overlooked this clause when it decided to use the statute in Rhode Island.⁵⁸

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Chapin, *The American Law of Treason*, p. 13.

⁵⁷ 35 Henry VIII, c. 2, Pickering. ed., *Statutes at Large*, V. 199.

⁵⁸ By stipulating that the people of England could be tried only in English courts, but that the people of America might be tried in specially commissioned ones (in England or elsewhere), this argument declared that colonists were different from Englishmen in the realm, and therefore not entitled to all of the rights of Englishmen. In considering the constitutional implications of the *Gaspee* affair and the charge of treason, William R. Leslie maintains that the empire was theoretically one, *i.e.*, the English law was the same in the realm as it was in the colonies. Therefore a Rhode Islander could expect to receive as fair a trial in England as an Englishman could receive in Rhode Island courts. In theory, Leslie's argument appears to be correct. But the real motivation for overseas trials resulted from the crown's suspicions that fair trials could not be procured in colonial courts.

A further incongruity in the Leslie argument is inherent in the very statute which the North administration used to justify its decision. The final clause of 35 Henry VIII, c. 2, excluded Englishmen from the statute which provided for treason trials out of the vicinity in which the crime might occur. While the statute could be justified when applied to an Irishman accused of treason (this was its original intent), it hardly was applicable in the case of a Rhode Islander accused of treason, given the argument to be true that the empire was a legal whole. How then could 35 Henry VIII, c. 2 and overseas trials apply to Rhode Island? Rhode Islanders were Englishmen, and therefore entitled to a trial of the vicinage.

This is not to say that the ministry and the crown lawyers did not view the empire as a whole; they did. However, the extension of that argument to justify the use of overseas trials in the case of the *Gaspee*, appears to be contrived. The reasons for the North administration's adhering to this argument were not based on such a simplistic legal justification, but rather upon the more pragmatic and political consideration that the bellicose Rhode Islanders should be taught a lesson never to be forgotten. William R. Leslie, "The *Gaspee* Affair: A Study of its Constitutional Significance," *The Mississippi Valley Historical Review*, XXXIX, No. 2 (September, 1952). 233-56, *passim*.

In 1769, Hillsborough was one of those crown officials who had shown keen interest in procuring conviction of Bostonians in England. But the year before, the Attorney and Solicitor General had given their opinion that the Bostonians had committed no treasons. Therefore they could not be tried in England under the Statute of Henry VIII.⁵⁹ As a result of this opinion and the mounting opposition in Parliament to such a measure, the interest in this sixteenth-century act had ended temporarily.

Unlike the Bostonians, Rhode Islanders were accused of high treason, and according to the opinion could be transported to England under the old

⁵⁹ Chapin, *The American Law of Treason*, p. 14.

Tudor statute. However the decision of the crown lawyers raised still another question: while "35 Henry VIII" would furnish legal sanction for such action, was there precedent for a commission of oyer and terminer, that is, a commission to hear and determine cases? A special report considering the precedent for such a commission was presented to the Attorney and Solicitor General by senior undersecretary John Pownall, who had taken more and more initiative in the *Gaspee* case as Lord Hillsborough prepared for his departure from office.⁶⁰ On August 14, about a week after the papers in Hillsborough's Dockyards-Act proposal had been drafted and dated, his successor, Lord Dartmouth, was sworn into office.⁶¹

William Legge, second Earl of Dartmouth, assumed that title upon the death of his grandfather in 1750 (William's father died several years before). Through his mother's second marriage to Lord North and Grey, William Legge and Frederick North became stepbrothers. They had done well for themselves. While neither was dynamic or brilliant, both had attained high positions in government. Lord North as head of the ministry and now Dartmouth as Secretary of State for the Colonies.⁶¹ From the standpoint of

⁶⁰ In his article Leslie discusses the importance of Pownall's report on the thinking of the cabinet members,

⁶¹ Oath of Secretary of State, 14 August, 1772, *Historical Manuscripts Commission*, Fourteenth Report, Appendix, Part X, *Dartmouth Manuscripts*, Vol. II: *American Papers*, p. 88.

⁶² Benjamin Franklin was particularly pleased because Dartmouth took a kind view toward western settlement, unlike Hillsborough. Bargar, *Lord Dartmouth*, p. 69.

personality and temperament, Dartmouth's appointment was welcomed with jubilation by the King, ministry, and public. The American reaction to his appointment was expected to be generally positive as well.⁶³

Although one of Dartmouth's biographers described him as ". . . quite unfit to hold an important office at a critical time . . ." ⁶⁴ he was not lacking in necessary political experience. He had served as President of the Board of Trade. His attitudes in the Stamp Act crisis had been responsible for his political pre-eminence. He considered the Stamp Act constitutional although "inopportune." As a member of the House of Lords, he used what influence he could to encourage the repeal of the act. As a result of that and the offices which he held as a member of the House of Lords and as President of the Board of Trade, Dartmouth soon emerged as a man sympathetic to the Americans, although one who supported the spirit of the Declaratory Act and Parliament's right to legislate for the colonies in all matters.

However, some observers believed that his political **naïveté** and lack of administrative imagination would make him the tool of his undersecretaries, Pownall and Knox. Both men had a wealth of experience and privileged information (especially Pownall) which was not available to a new appointee, let alone

⁶³ *Ibid.*, p. 2.

⁶⁴ *Ibid.*, pp. 27, 31.

⁶⁵ *Ibid.*, p. 33.

one lacking in political cunning and insight.⁶⁶ It was rumored that the resignation of Hillsborough, and the appointment of Dartmouth, left the office of colonial secretary susceptible to the increased influence and manipulation of the undersecretaries. The report which Pownall submitted to the Attorney and Solicitor General, regarding the precedent and legal basis for royal commissions indicated the extent of Pownall's influence.

The Privy Council assembled on Thursday evening, August 20. The council members were in receipt of several papers from Montagu, Wanton, and Dudington to each other, dating from March, 1772, as well as copies of letters from Admiral Montagu to the Lords of the Admiralty and Governor Wanton to Lord Hillsborough. The detailed deposition of William Dickinson was the primary item of evidence. William Checkley's letter to the Commissioners of Customs in Boston was also included.⁶⁷

Despite the abundance of correspondence, affidavits and other communications Pownall's report, along with the Dockyards-Act opinion of the Attorney and Solicitor General, received the greatest attention.⁶⁸ In his report, Pownall offered several detailed instances in which commissions had been employed in the colonies prior to 1772. One involved Nathaniel Bacon

⁶⁶ Ibid., p. 65.

⁶⁷ John Pownall to Philip Stephens, Whitehall, 22 August, 1772, Colonial Office, 5:250, folio 51, duplicate, Edwards, Gaspee Papers, Rhode Island Historical Society.

⁶⁸ Leslie, "The Gaspee Affair," *Mississippi Valley Historical Review*, XXXIX, No. 2 (September, 1952), 240.

⁶⁹ His first example concerned proceedings in 1711 against residents of Antigua who were engaged in an uprising. He offered no further details in the body of the report. There apparently is no appendix for the Antigua problem, even though Pownall included some twenty-six appendices in his report. He mentions: "The Case of the Proceedings in 1711, against the Insurgents in Antigua, of which a State has already been given." Apparently the Antigua case was discussed at a previous meeting. "State of the Business of Rhode Island Proposal to be considered on Thursday the 20th of August," John Pownall to Thurlow and Wedderburn, Wedderburn Papers, 1:7, William L. Clements Library, University of Michigan.

of Virginia, who in 1676 led a rebellion challenging the existing administration of Governor William Berkley. As a consequence of the rebellion, the English government appointed a new governor for Virginia with a special commission ". . . either to make his process against him [Bacon] there, or to send him on Ship-Board with the proofs relating to his Crimes, in order to his being transported to England for his Tryal. . . ." ⁷⁰ In addition to the provision for overseas trials, ". . . Commissioners were appointed to inquire into & report to the King & Council, a State of Grievances that were alledged to have occasioned the people's taking up arms." ⁷¹

As another example, Pownall cited the imprisonment of Sir Edmund Andros, whom James II appointed as Governor of the newly federated northern colonies in the Dominion of New England. When news arrived in New England in April, 1689, that James II had been forced into exile, Andros was imprisoned by Massachusetts authorities. The request was made that Andros and his cohorts be sent to England ". . . to answer before his Majesty what

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

might be objected against them." ⁷²

While Bacon's Rebellion and the arrest of Andros offered precedent for sending colonials to England for trial, another illustration was even more significant and useful for Pownall's purposes. In 1712, David Creagh, a Barbadian merchant, imprisoned in Jamaica on a charge of treason, ". . . was sent over to England in Custody on board a Man of War . . .", the legal justification being a statute from the reign of Anne providing for trials in England regardless of the locale of the treasonous act. Furthermore, no prisoners were to be sent without ". . . full proof of their Guilt." ⁷³

As further proof Pownall offered an opinion by the Attorney and Solicitor General. Sometime after the Peace of Ryswick in 1697, the crown lawyers suggested that pirates ". . . arrested & committed to Custody in different colonies ..." ⁷⁴ be sent for by warrant and transmitted to England for trial. Since a judge of admiralty held that such warrants were unprecedented, he issued a dissenting opinion:

. . . the Secretary of State [should] write to the Govr. of the place where they were in custody to deliver him on board one of His Majesty's ships, the Lords of the Admiralty giving orders for their being recd, & brought over in safe custody. ⁷⁵

The opinion of the Admiralty judge prevailed.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

Bacon's Rebellion, the imprisonment of Andros, the trial of David Creagh, and the disposition of pirates incarcerated in the colonies were the most obvious examples of precedent for overseas trial which Pownall presented to the cabinet. From these examples he proceeded to the question of whether to prosecute by special commission or by some other measure. An act passed under William III required that "... all Robberies, Murders & Felonies, & all other capital Crimes whatsoever, done & committed in Newfoundland ..." ⁷⁶ could only be tried in England. In 1738, an unsuccessful attempt was made to empower the Governor of Newfoundland to create special courts of oyer and terminer, to try such cases in the colony.

Although this provision was disavowed by the Privy Council, the proposal finally succeeded in 1749 so that "... the governours of Newfoundland are [now] empowered under the Great Seal to issue special commissions of oyer and terminer for the Trial of all criminal offences whatsoever in Newfoundland. . . ." ⁷⁷ However, Pownall was quick to point out that this was an exception since there were no established common-law courts in the colony. He doubted whether such a precedent would have occurred "... where Courts of Judicature have been already established. . . ." ⁷⁸

While there was scant precedent for special courts of oyer and

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

terminer in the colonies, examples of commissions of inquiry appointed for the colonies were bountiful. Pownall reported that "There were many Instances of Commissioners appointed to inquire into & report the State & Condition of Colonies that have fallen into great Disorder and confusion."⁷⁹ In turning instead to commissions of inquiry, Pownall was traditionally, historically, and legally on firmer ground.

The genesis of such commissions of inquiry dated back to eleventh-century Norman England.⁸⁰ Such inquisitorial bodies were usually of two types, either executive or parliamentary. The executive were by far the more important. Of the two types of executive commissions, that is, royal commissions and special committees, the former was the oldest, the most respected, and the most popular.⁸¹ Because a commission of inquiry could be issued either by royal fiat or by parliamentary statute, Parliament had often tried to restrict the King's option to issue commissions.

One historian described the popularity of commissions as subject to ". . . the fluctuation of the supremacy of the Crown."⁸² In the age of George III when the royal prerogative was stronger than it had been at any time since

⁷⁹ *Ibid.*

⁸⁰ Hugh McDowall Clokie and J. William Robinson, *Royal Commissions of Inquiry: The Significance of Investigations in British Politics* (Stafford University Press, 1937), p. v.

⁸¹ *Ibid.*, p. 24.

⁸² *Ibid.*

the reign of Queen Anne, the contemplation of its use was perhaps not so surprising, even though the utilization of such commissions had declined during the eighteenth century. Pownall cited a commission formed under Charles II to investigate evasions of the navigation laws in New England, as well as the previously mentioned disturbances of Nathaniel Bacon in Virginia. An occurrence in New Jersey in 1752 provided the most recent example of such commissions in the eighteenth century. Pownall noted that "It does not appear however that in any of these cases the power of the Commissioners went further than Examination & Report."⁸³ In fact the New Jersey commission had expressly prohibited the right to hear and determine, the Attorney and Solicitor General being ". . . of opinion that such Commission ought to have the Sanction of an Act of Assembly there, or an Act of Parliament here."⁸⁴

Taken collectively, the precedent cited in the Pownall report looked something like this: there was legal justification for transportation of criminals to England for trial, including persons accused of treason. A court or commission of inquiry for "examination and Report" presented no apparent problems either. However there was no precedent for establishing commissions to hear and determine, where courts of judicature were already in existence. To establish such courts would require approval either in the

⁸³ State of the Business of Rhode Island." John Pownall to Thurlow and Wedderburn, Wedderburn Papers. 1:7. William L. Clements Library, University of Michigan.

⁸⁴ *Ibid.*

Rhode Island General Assembly or by Parliament.

From the arrival of the news of the burning of the *Gaspee* in England, until the cabinet meeting of August 20, it would appear that five options presented themselves as solutions to the Rhode Island problem. The first, which would have permitted indictments and trials in Rhode Island was quickly discarded, since the ministry believed that Governor Wanton had no intention of tolerating even one indictment, save a conviction. The second alternative sought indictments under the auspices of the Admiralty in North America with trial in England, via provisions in the newly passed Dockyards Act. This proposal was presently pending, the letters having not been sent as yet to America by the Lords of the Admiralty.

Of the three remaining possibilities, all involved commissions of one sort or another. One might provide for a royal commission of inquiry whose members would serve in the capacity of a grand jury to determine facts and ultimately secure indictments. The actual trial of the suspects could be in a Rhode Island court. Since British officials doubted that convictions would ever result in colonial courts, the Preston trial in Boston notwithstanding, this plan would not have been given serious consideration.

A fourth alternative might have involved two commissions, one for the purpose of indictments (a commission of inquiry) and another for trial (oyer and terminer). Since both commissions could presumably operate in Rhode Island, the colony's common-law courts would apparently be by-passed completely. As Pownall had pointed out in his report, appointing commissions

to do what established courts of judicature had been meant to do, was unorthodox and unprecedented. Therefore it was unlikely that a cumbersome proposal such as this one, with two specially appointed commissions, would be given any worthwhile consideration.

Finally, a royal commission of inquiry, sanctioned by precedent, could serve as a fact-finding body to obtain indictments. The suspects could then be sent to England for their trials. This plan best embodied the philosophy of the treason statute of Henry VIII, which permitted trial by jury or by commission in any shire or county in the realm irrespective of where the crime of treason was committed. Given this option the cabinet decided upon trial by jury in England, rather than trial by royal commission in Rhode Island or in England. Secretary of State Lord Dartmouth thus canceled the letters presently in the office of the Lords of the Admiralty, which had been drafted under Hillsborough. The letters to Wanton, Montagu, and Cage were forthwith recalled and canceled on August 20, and the plan to make use of the Dockyards Act in the *Gaspee* affair was abandoned.⁸⁵

In choosing plan five as the only acceptable alternative, the crown was inviting a host of problems. For one thing, the solution might be acceptable to the Privy Council but was unlikely to be considered acceptable by Rhode Islanders. Any plan which the cabinet might select, short of letting Rhode Islanders **adjudicate** their own problem, was likely to precipitate violent reaction.

85 Cabinet Minutes, 20 August, 1772, *Historical Manuscripts Commission*, Fourteenth Report, Appendix, Part X, *Dartmouth Manuscripts*, Vol. II: *American Papers*, p. 88.

Consequently, the cabinet probably considered actions which would help mollify the Rhode Islanders. Perhaps the decision to appoint the Governor of Rhode Island as chairman of the commission was one attempt to placate.⁸⁶

The cabinet chose four additional commissioners who, unlike Wanton, were undisputed friends of the crown, a prudent decision from their standpoint since Wanton's appointment might conceivably vitiate the Commission's objective. Three of the members were chief justices of colonies, Peter Oliver of Massachusetts, Daniel Horsmanden of New York, and Frederick Smythe of New Jersey. The fifth member was Robert Auchmuty, Jr., Judge of the vice-admiralty court for New Hampshire, Massachusetts, Rhode Island and Connecticut.⁸⁷

One can only speculate as to the reasons for these appointments. Including the Governor, four were born in the colonies and one, Smythe, although a migrant from England had been an established resident of New Jersey for some time. Consequently, as colonials, the commissioners could appear more as a tribunal of peers instead of a court of transported inquisitors. In addition, the choice of colonial chief justices would provide the needed legal expertise.

Perhaps Lord Dartmouth's presence was responsible for what moderating influence the council displayed. He was not the incessant pursuer of

⁸⁶ "Royal Commission to the Commissioners of Inquiry, relative to the Destruction of the Gaspee," Bartlett, *Records*, VII, 108.

⁸⁷ *Ibid.*

undutiful colonials that Hillsborough was. One member of the council, Secretary of War William Wildman, Second Viscount Barrington, observed that "It is not probable, in my opinion, that Lord Hillsborough's resignation will encrease the vigour of American measures. ..." ⁸⁸ Far from increasing it, it was possible that Dartmouth's appointment might even lessen that "vigour." Dartmouth considered the burning of the *Gaspee* a "... daring act of violence." ⁸⁹ But he also observed that he would not permit "... any orders to issue from his office for bringing home for trial one of the prisoners accused of riot. ..." ⁹⁰ Instead, he thought the proper course to be "... for the person to take his trial in the country where the offence was committed. ..." ⁹¹ Regardless of his strong feelings against overseas trials, Dartmouth gave his consent.

Dartmouth's office recalled all papers pertaining to the Hillsborough plan and canceled them. Instead, the *Gaspee* attackers, when and if discovered, would be sent to England under the statute of 35 Henry VIII. The Attorney and Solicitor General were requested to draw up a proclamation and commission. The cabinet was scheduled to meet again on Wednesday, August

⁸⁸ Lord Barrington to Thomas Gage, Cavendish Square, 2 September, 1772, Gage Papers. English Series, XXIII, William L. Clements Library, University of Michigan.

⁸⁹ Bargar, *Lord Dartmouth*, p. 77.

⁹⁰ *Ibid.*, p. 78.

⁹¹ *Ibid.*

26, to scrutinize the newly drafted documents before dispatching them to America. A ship was docked and ready to set sail upon a moment's notice, with the cabinet's handwork. On August 26, by an Order in Council, the King gave his support to the proclamation and commission, and the Chancellor was instructed to affix the Great Seal to both documents.⁹²

While the Privy Council was busy deciding on the manner of prosecution for the Rhode Islanders, Lord Dartmouth had designated decisions in his department to John Pownall, as the undersecretary's extensive report indicated. The worst fears of Pownall's critics had been realized. Dartmouth had delegated his responsibilities to his undersecretary, but he did not view it as abandoning his duties. Blaming his departure on London's hot weather he retired to his country estate in Staffordshire.⁹³ While Dartmouth played the role of country gentleman, Pownall sent him dispatches for his signature. Such was the extent of Dartmouth's involvement in the final matters pertaining to the Rhode Island business.

The State department's enthusiastic attempt to determine the facts in the *Gaspee* affair was matched by the efforts of the Lords of the Admiralty. It was a British lieutenant in the royal navy who had been injured--a royal navy vessel which had been destroyed. The Admiralty had its own responsibilities

⁹² Order in Council, 26 August, 1772, *Historical Manuscripts Commission*, Fourteenth Report. Appendix, Part X, *Dartmouth Manuscripts*, Vol. II: *American Papers*, p. 90.

⁹³ Wickwire, *British Subministers*, pp. 141-42. Bargar, *Lord Dartmouth*, p. 77.

to discharge, among them the court-martial of Lieutenant Dudingston for the loss of his vessel.

The court-martial was scheduled for October 14, on board the *Centaur* man-of-war in Portsmouth harbor, England.⁹⁴ The decree of the court stated,

... that the Schooner was seized in the night time by a number of armed men in Boats who burnt her, that Lieut: Dudingston and the Officers and People belonging to her did their duty in opposing the seizure to the utmost of their power on so short a notice. The Court doth therefore adjudge them to be honourably acquitted and they are hereby so acquitted accordingly.⁹⁵

Dudingston was promoted to the rank of captain. Before leaving Rhode Island in September, Montagu had instructed Dudingston upon completion of his court-martial, to call on Lord Hillsborough and provide him with a detailed account of the nature of the Rhode Island people and their constitution, and what bearing these conditions might have had upon his late misfortune. If he ever told his story he recounted the facts for Dartmouth, not Hillsborough.⁹⁶

The new captain could take little solace in his acquittal and promotion

⁹⁴ Admiral Montagu to the Secretary of the Admiralty (extract), Boston, 2 September, 1772, *Rhode Island Historical Society Proceedings*, 1891, p. 83.

⁹⁵ William Bryant, "HMS Gaspee—The Court Martial," *Rhode Island History*, XXV, No. 3 (July, 1966), p. 86. Minutes of the court martial were originally reprinted in an 1891 issue of the *Rhode Island Historical Society Proceedings*.

⁹⁶ John Montagu to the Right: Honorable, The Earl of Hillsborough, Boston in New England, 1 September, 1772, Colonial Office, 5:761. Massachusetts Bay, folio 377, Edwards, Gaspee Papers, Rhode Island Historical Society.

The truth was that his disability had proved quite painful and expensive. He had petitioned the Admiralty several times for compensation. On February 8, 1773, the Privy Council reviewed an admiralty report concerning Dudingston's plea. The captain had petitioned his superiors a little over a month before, noting that he had ". . . put almost an entire stop to the illicit Trade of that Colony . . ." ⁹⁷ and that he wished compensation for injuries he had sustained as a result of his diligence--that he had been attacked by no less than two hundred men in seventeen armed boats. ⁹⁸

The council decided in his favor and awarded him five shillings a day and half-pay over and above compensation for his rather expensive cure, ". . . as if he had been wounded in fight with the enemy." ⁹⁹ The French spa for which Dudingston soon departed must have done him some good; eventually he was able to resume his commission in the navy and would, at a later date, command another vessel in the New England area. ¹⁰⁰ While the Dudingston court-martial was concluding, however, Rhode Islanders were pondering the meaning of the first scattered reports from England concerning the ministry's newly created commission.

⁹⁷ James Monro, ed., *Acts of the Privy Council: Colonial Series* (London: 1912), V, 357.

⁹⁸ *Ibid.*, p. 358.

⁹⁹ *Ibid.*

¹⁰⁰ Neil R. Stout, "The Royal Navy in American Waters, 1760-1775," Ph.D. dissertation, University of Wisconsin. 1962, p. 347.

CHAPTER VII

A ROYAL COMMISSION FOR RHODE ISLAND

By late October 1772, reports circulated in Rhode Island regarding the ministry's plans for those men who had burned the King's royal schooner in Narragansett Bay. The Providence and Newport papers told their readers of ". . . a proclamation [which] passed the great seal, promising a reward of £500." ¹ More important was the rumor that a commission of oyer and terminer had also passed the Great seal. The report came from a London paper dated September 2. Commissioners presumably were authorized to ". . . try any person or persons that may be taken in consequence of the proclamation issued for apprehending any that were concerned in plundering and burning the *Gaspee* schooner." ²

¹ *Newport Mercury*, 26 October, 1772; *Providence Gazette*, 24 October, 1772.

² William Leslie, in his article, "The Gaspee Affair: A Study of its Constitutional Significance" suggests that the newspapers deliberately tried to mislead the public with misinformation. He writes that accounts in both local papers ". . .with little regard for the truth that a 'commission of oyer and terminer has passed the great seal . . .'" He goes on to point out that there were "errors of omission, too. They seem deliberate." Allowing for the distance from England, the absence of official communications from England, and the importance given to unofficial reports and rumors, it seems that the press printed what it had heard. There is no proof of any "deliberate" effort by the press to create false impressions concerning the nature of the commission. William R. Leslie, "The Gaspee Affair: A Study of Its Constitutional Significance," *The Mississippi Valley Historical Review*, XXXIX. No. 2 (September, 1952), 242.

In November, Henry Marchant, the attorney general for Rhode Island, was also confused about the nature of the commission. Marchant, who was called home from England by his government in order to offer his legal assistance in the wake of the *Gaspee* burning, was preparing to depart, when the news of the schooner's fate arrived there. Having gained his intelligence from the newspapers, he mentioned that the commissioners were empowered to ". . . *try* [italics mine] such Persons as may be discovered that were concerned in that transaction." ³ Marchant hoped that the report of such a commission was not true, as it would prove ". . . an annihilating Stroke to the very being of our Civil Constitution. . . ." ⁴ In early December, a Boston preacher referred to the royal commission as one of the ". . . new Courts of Admiralty," something it most assuredly was not. ⁵

Soon challenged was the idea that the commission was a court of oyer and terminer rather than a court of inquiry for indictment. The issue of the *Newport Mercury* on November 30 provided the first accurate, although

³ Henry Marchant to Benjamin Franklin, Newport, Rhode Island, 21 November, 1772, Henry Marchant Letter Book, Newport Historical Society.

⁴ *Ibid.*

⁵ John Allen, "An Oration Upon the Beauties of Liberty, Or the Essential Rights of Americans," Papers Relating to the *Gaspee*, compiled by Walter A. Edwards, Rhode Island Historical Society. Edwards identifies the minister as Issac Skillman. Leslie used a printed pamphlet edition of the sermon and referred to the author (minister) as the Reverend Mr. John Allen. Leslie also calls the sermon, "An Oration On the Beauties of Liberty, Or the Essential Rights of Americans."

unofficial, report:

His Majesty has thought fit, by letter patent under the great seal of Great Britain, to constitute and appoint . . . Commissioners for enquiring into all the circumstances relative to the attacking, plundering and burning the *Gaspee* schooner. . . .⁶

Despite the appearance of accurate reports such as this, misinformation was prevalent. As late as December 21, the *Newport Mercury* reprinted a Boston article of the same month observing the use of troops at Rhode Island ". . . to support the *trial* [Italics mine] of persons there suspected, or rather informed against. ..." ⁷ The report continued: "Others say, that these devoted persons are to be taken agreeable to a late act of parliament [Dockyards Act], and sent for trial to London!" ⁸ This account reflected the confusion as to just where the trials were to be held, and what obligations the alleged commissioners would have.

Misinformation concerning the personnel on the commission was also evident. One account identified the commissioners as the ". . . Governors of New-York and Connecticut, and others named within. . . ." ⁹ Henry Marchant heard that the commissioners would be the ". . . Gov'rs of this Colony [Rhode Island] & Connecticut & the Chief Justices of New Jersey, New York and

⁶ *Newport Mercury*, 30 November, 1772.

⁷ *Ibid.*, 21 December. 1772.

⁸ *Ibid.*

⁹ *Newport Mercury*, 26 October, 1772; *Providence Gazette*, 24 October, 1772.

Boston. . ." ¹⁰ A mid-December report from a Boston paper declared that "The Governor and Lieutenant Governor of this province [Massachusetts Bay, are] two of the appointed Judges. ..." Admiral Montagu was said to be ". . . another of the Judges. . . ." ¹¹

Of the five men who were to sit on the commission, nearly a dozen names were reported to be on it: Governors William Tryon of New York, Jonathan Trumbull of Connecticut, Thomas Hutchinson of Massachusetts, and Joseph Wanton of Rhode Island; Chief Justices Daniel Horsmanden of New York, and Frederick Smythe of New Jersey, Admiral John Montagu, and both Oliver brothers, Andrew and Peter, lieutenant governor and chief justice of Massachusetts respectively. The truth was that while not all of these men were commissioners, all were to receive letters from the state department, with the exception of Lieutenant Governor Oliver and Governor Trumbull of Connecticut.

Conflicting and confused reports were understandable. Even the ministry had approached the Rhode Island problem with a sense of confusion and disorganization. The determination of officials in the state department to settle the matter to their own liking, such as Hillsborough's preference for the Dockyards Act, contributed to the ministry's bewilderment. Hillsborough's resignation and the accession of Dartmouth to the state department

¹⁰ Henry Marchant to Benjamin Franklin, Newport, Rhode Island, 21 November, 1772, Henry Marchant Letter Book, Newport Historical Society.

¹¹ *Newport Mercury*, 21 December, 1772.

only served to compound troubles, and to lead ultimately to the cancellation of Hillsborough's plan and the inauguration of another, the idea of a commission of inquiry.

When one considered the distance of three thousand miles and the reliance on unofficial reports, often oral, it is not surprising that as late as December many colonials still believed that the Dockyards Act was to be the legal basis for the commission. Apparently most people seemed to think the act a result of the *Gaspee's* destruction. That the Dockyards Act was passed in April in response to an event in England; that it had nothing to do with the attack upon the schooner some two months later; that news of the Dockyards Act was transmitted to America at about the same time that the schooner's fate was reported in England--none of these circumstances made any real impact upon the colonial misconception that the act was a consequence of the episode in Rhode Island. Apparently, few colonials were aware of the chronological order of events.¹²

By December's end the Dockyards Act was still a topic of discussion, even though it had been set aside by the ministry months ago. By resolution the Boston town meeting condemned the ignoring of "Trial by our Peers in the Vicinity,"¹³ a violation sanctioned in the act. The Boston freeholders compared

¹² For a further explanation of the confusion over the Dockyards Act see Leslie's article, "The Gaspee Affair," p. 239. Hutchinson was aware that the act had nothing to do with the *Gaspee* burning.

¹³ *Newport Mercury*, 28 December, 1772.

the possible effect of this act to a similar and earlier resolution of Parliament:

... about the year 1769, the British Parliament passed Resolves for taking up a number of persons in the Colonies, and carrying them to Great-Britain for trial, pretending that they were authorized so to do, by a Statute passed in the Reign of Henry the Eighth, in which they say the Colonies were included, *although the Act was passed long before any Colonies were settled, or even in contemplation.*¹⁴

The Charlestown (Massachusetts) freeholders concurred with the Bostonians. They cited the special dangers inherent in an act which threatened to subvert American liberties, and they found the appointment of a commission not unlike the arbitrary ecclesiastical courts in Catholic countries:

One of the justest Complaints against the Inquistorial Court, in Romish countries, is the apprehending Persons suddenly upon Suspicion and conveying them to Places, where they can have no Assistance from their Friends in making their Defence.¹⁵

If the Dockyards Act had ceased to be an issue in July, insofar as the ministry was concerned, why did colonials continue to cite it as the crown's justification for trying Rhode Islanders in England? Obviously colonials must have been ignorant of the ministry's decision to set it aside. The host of inaccurate rumors which had sprouted in the preceding weeks would be

¹⁴ *Ibid.*

¹⁵ *Massachusetts Gazette and Boston Newsletter*, 31 December, 1772.

¹⁶ The fact that colonials were still talking of the Dockyards Act as the basis for prosecution of Rhode Islanders involved in the *Gaspee*, indicates that many still believed this as late as December, 1772. *Newport Mercury*, 21 December, 1772.

rectified in part by the arrival of official news from England. But first impressions die hard, and many half-truths continued to circulate.

Captain Howe, commander of the sloop-of-war *Cruizer* left England in early September with the official state department dispatches. Although he was destined for Boston, bad weather had necessitated docking at South Carolina on November 10. After an extended layover Howe finally resumed his voyage, arriving at New York on December 10. Although Boston was his destination he would not reach that city until December 28, and the fact that Admiral Montagu ordered the leaky *Cruizer* caulked perhaps explains why the captain may have voluntarily anchored at New York.¹⁷ Between the bad weather and the *Cruizer's* unseaworthiness, the commission of inquiry was off to a rather late beginning.

Shortly after his arrival in New York on December 10, Howe sent Montagu the state department correspondences which the Admiral received at evening by an express vessel from New York. A letter from the Lords of the Admiralty to Montagu contained several enclosures: dispatches for Governors Wanton, Tryon, Franklin and Hutchinson; within these, enclosures for the chief justices of Massachusetts, New York and New Jersey. There were letters for Robert Auchmuty, judge of the vice-admiralty court in Boston district, and one for General Thomas Gage as well.¹⁸

¹⁷ *Providence Gazette*, 19 December, 1772.

¹⁸ Admiral Montagu's Journal, 11 December, 1772, Edwards, Gaspee Papers, Rhode Island Historical Society.

On December 11, in accordance with his instructions, Montagu dispatched the letters to Tryon, Franklin and Gage by a return express vessel to New York. Those to Hutchinson and Governor Wanton were delivered locally. Among these was a personal letter from the Admiral to the Rhode Island governor.¹⁹

Governor Wanton received his letter three days later on December 14²⁰. In it Montagu assured him that Captain Keeler of the *Mercury* was prepared to assist him, to present him with the royal commission and instructions when he was ready to call his colleagues to order, and to take into custody any prisoners or witnesses sent to him. Montagu recommended that Wanton apprehend the people whose names were mentioned in the deposition of Aaron Briggs, the alleged participant in the attack. Captain Keeler would surrender Briggs for questioning upon the commissioners' request. Montagu reminded the Governor that, because he was the first named in the commission, it was his responsibility to assign the time for convening.²¹

Lord Dartmouth's letter was the first official correspondence which Wanton had received concerning the policy of the North administration in

¹⁹ *Ibid.*

²⁰ Joseph Wanton Circular to the Judges Oliver and Auchmuty, 24 December, 1772, William R. Staples, *The Documentary History of the Destruction of the Gaspee* (Providence: Knowles, Vose and Anthony, 1845), p. 23. American Culture Series, University Microfilms, University of Michigan.

²¹ John Montagu to Joseph Wanton, Boston, 11 December, 1772, Staples, *Documentary History*, p. 23, University Microfilms, American Culture Series, University of Michigan.

regards to the Gaspee destruction.²² Dartmouth raised the possibility that the attack could have been designated an act of piracy; more careful consideration, by the Attorney and Solicitor General, resulted in denoting it as an offence ". . . of a much deeper dye. . . ." ²³ The crown's lawyers called it ". . . an Act of High Treason, vizt. Levying War—against the King. . . ." ²⁴

When at least three of the commissioners had arrived at Newport, Admiral Montagu was to deliver the commission and instructions--the necessary authorization for proceeding to business. General Gage would be instructed to send troops to Rhode Island to insure the peaceful execution of duties by the commissioners, in the event that resistance or disturbances were offered by the people of Newport. The success of the inquiry, warned Dartmouth, depended upon the Governor's cooperation:

. . . His Majesty depends on the care and vigilance of the Civil Magistrates of the Colony, to take the proper Measures for arresting and committing to Custody, in order to their being brought to Justice, such persons, as shall, upon proper Informations made before them or before His Majesty's Commissioners appear to have been concerned in the plundering and destroying the Gaspee Schooner & the dangerously wounding and ill-treating His Majesty's Officer who commanded her. . . .²⁵

²² Right Honorable the Earl of Dartmouth to Joseph Wanton, Whitehall, 4 September, 1772, Manuscript Papers, Gaspee Commission Records, John Carter Brown Library, Brown University.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.* The last three lines, beginning with ". . . & the dangerously wounding . . ." were deleted from the excerpt printed in the newspapers.

Finally he confirmed the worst fears of Rhode Islanders:

... persons concerned in the burning the Gaspee Schooner, and in the other violences which attending that daring insult, should be brought to England to be tried; and I am therefore to signify to you his Majestys pleasure, that such of the said Offenders as may have been or shall be arrested & committed within the Colony of Rhode Island be delivered to the care and custody of Rear Admiral Montagu, or the Commander in Chief of His Majesty's Ships in North America for the time being, or to such Officer as he shall appoint to receive them; taking care that you do give notice thereof to the persons accused in order that they may procure such Witnesses on their behalf as they shall judge necessary which Witnesses together with all such as may be proper to support the charge against them will be received by Rear Admiral Montagu and sent hither with the Prisoners.²⁶

Dartmouth enclosed a copy of the King's proclamation. In this document, a pardon was offered to anyone who had participated in the destruction of the *Gaspee*, except the men who identified themselves as the Captain and head sheriff and the person who wounded Lieutenant Dudingston. A large reward totaling £1000 was also offered to informers, upon conviction of accused persons, Dartmouth advised:

... I am commanded by the King to transmit the said Proclamation to you, and to signify to you His Majestys Pleasure that you do cause the same to be printed, and Copies thereof to be affixed in the most public places of the principal Towns within the Colony.²⁷

The Secretary concluded that just as Rhode Islanders and their civil magistrates would be expected to treat the commissioners with all due respect he could assure Governor Wanton that:

²⁶ *Ibid.*

²⁷ *Ibid.*

... His Majesty will not fail to punish with utmost severity, those who shall either wantonly or unnecessarily distress and obstruct the lawful commerce of His subjects in Rhode Island, or shall otherwise injure them in their persons or properties.²⁸

Fortuitously these dispatches had arrived just as Wanton was preparing to leave for Providence for the opening meeting on December 14 of the General Assembly's winter session. He had read them hurriedly and had gone to Providence, where he placed the dispatches in the hands of the Speaker of the House, Stephen Hopkins. In his subsequent justification for making the letter available to Hopkins, Wanton gave as his reasons: the serious nature of the burning; that the letter was addressed to "The Governor and Company" and that Dartmouth had called upon all civil magistrates to assist the crown.²⁹ In Wanton's view this included the General Assembly as well as the Governor.

While the dispatch from Admiral Montagu would prove a source of irritation to the deputies, Lord Dartmouth's comments commanded the greatest interest and elicited the most reaction.³⁰ According to Ezra Stiles, some legislators urged ". . . Spirited Opposition, Declaration of Rights, Denial of Jurisdiction of the Commissioners, &c." ³¹ But the more moderate voices in the Assembly prevailed, and it was decided to adopt a policy of

²⁸ *Ibid.*

²⁹ Joseph Wanton to Right Honorable the Earl of Dartmouth, Rhode Island, 7 July, 1773, Colonial Office, 5:1285, folio 397-400, Edwards, Gaspee Papers, Rhode Island Historical Society.

³⁰ *Newport Mercury*, 21 December, 1772.

³¹ Franklin Bowditch Dexter, ed., *The Literary Diary of Ezra Stiles* (New York: Charles Scribners, 1901). 1, 338.

inaction, at least until the commissioners convened. At that time the Assembly might better know what the commissioners planned to do.³²

The General Assembly appointed a committee of four—Darius Sessions, Stephen Hopkins, John Cole and Moses Brown to prepare a draft letter in reply to Lord Dartmouth.³³ Beyond that the legislators decided ". . . to hold an observant but still and unactive Conduct in the present Storm."³⁴ The General Assembly did that and nothing more; its members decided upon adjournment for about two weeks.³⁵

The General Assembly reconvened on January 11 at East Greenwich.³⁶ Some members engaged in heated rhetoric, but the Assembly itself was cautious. During this session, Stephen Hopkins, in his capacity as chief justice, addressed the Assembly. He wanted advice as to the position he should take if the commissioners were to issue indictments. As chief justice he would have to issue warrants for arrests. The Assembly did not commit itself, but instead left the decision to Hopkins. During the same speech, he assured the members of both houses ". . . that for the purpose of

³² *Ibid.*

³³ Rhode Island Colony Records, December Session, 1772, Vol. IX, 32, Rhode Island State Archives.

³⁴ Dexter, *Stiles Diary*, I, 338.

³⁵ Ezra Stiles to the Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, *Ibid.*, I, 349.

³⁶ *Providence Gazette*, 9 January, 1773. They adjourned on January 16, 1773, *Providence Gazette*, 16 January, 1773.

Transportation for Trial he would neither apprehend by his own Order, nor suffer any executive Officers in the Colony to do it." ³⁷

On another occasion, however, Hopkins had assured the commissioners that he would be ready to lend them his assistance when asked, Ezra Stiles explained that Hopkins was not really engaging in duplicity:

Our Superior Court are ready to try Criminals before themselves, not to send any out of the Colony for Trial: and in this Light must be understood the Judges offering their Assistance. ³⁸

The special assembly committee transmitted an edited copy of Dartmouth's letter to Samuel Adams, asking his advice as to how they should proceed in the matter. ³⁹ They wrote:

We therefore ask that you would seriously consider of this whole matter, and consult such of your friends as acquaintance as you may think fit upon it, and give us your opinion in what manner this Colony had best behave in this critical situation, and how the shock that is coming upon us may be best evaded or sustained. We beg you, answer as soon as may be, especially before the 11th of January, the time of the sitting of the General Assembly. ⁴⁰

³⁷ Dexter, *Stiles Diary*, I, 349.

³⁸ *Ibid.*,

³⁹ Governor Wanton submitted the Dartmouth letter to the Speaker of the House, Stephen Hopkins. Hopkins placed it in the hands of the Secretary of the General Assembly, Henry Ward. Ward transcribed this letter and it is presently in the John Carter Brown Library, Brown University. The following notation appears on the back of the copied letter: "I certify that what is written upon the Five proceeding Pages contains a true and exact Copy of an original Letter from the Right Honble the Earl of Dartmouth to the Honble Joseph Wanton, Esq. Governor of the Colony aforesaid and is therewith duly and carefully compared. Witness Henry Ward Secry." The assembly would later edit the letter before releasing excerpts of it to Samuel Adams, and ultimately to the Boston press.

⁴⁰ Darius Sessions to Samuel Adams (excerpt), 25 December, 1772, William V. Wells, *The Life and Public Service's of Samuel Adams* (Boston: Little, Brown and Co., 1865), II, 14.

Adams was eager to lend his counsel to the Rhode Islanders. On three occasions (December 28, January 2, and a third letter in February) he explored several approaches which the legislature might use in dealing effectively with the commission. Although in December he admitted that he did not have time to weigh adequately all the possibilities, or to consult with his friends, he called into question the legality of the commission. It was based on an "Act of Parliament," in obvious reference to the Dockyards Act. Thus the "... Commission which is founded upon it, is against the first Principles of Government and the English Constitution, Magna Charta & Many other Acts of Parliament, declaratory of the Rights of the Subject. . . ."⁴¹

Secondly, he commented upon the commission itself. A commission which tried to replace what a Grand Jury was meant to do was clearly unconstitutional. He referred to the grand jury "... as one of the greatest Bulwarks of the Liberty of the Subject; instituted for the very Purpose of preventing Mischeife being done by false Accusers,"⁴² Thus the ordinary courts of justice had been supplanted.⁴³ Adams pledged his assiduous support to the Rhode Island cause, hoping that leaders in other colonies would do the same: "It has ever been my Opinion, that an Attack upon the Liberties of one Colony

⁴¹ Samuel Adams to Darius Sessions, 28 December, 1772, Harry Alonzo Cushing, ed., *The Writings of Samuel Adams* (New York: G. P. Putnam's Sons, 1904-1908), II, 390.

⁴² *Ibid.*

⁴³ *Ibid.*

is an Attack upon the Liberties of all; and therefore in this Instance all should be ready to yield Assistance to Rhode Island." ⁴⁴

A more detailed letter followed on January 2. Adams believed that England had been provoking the colonists for some time with policies which were inimical to the rights of Americans. He saw the *Gaspee* affair as an opportunity for England to bring about the inevitable clash. The most Rhode Islanders could do, was to try to cushion the impact and mitigate its effects.

He observed that silence on the legislature's part might be construed as compliance or submission to the commission. Giving precedence to such a commission was the worst thing that the legislature should want to do.⁴⁵ On the other hand, if resistance were offered, such a challenge would be considered a threat to royal authority. He raised other hypothetical points. The Governor might refuse to assemble the commissioners, or he might assemble them and yet fail to ". . . take measures for arresting & committing to Custody . . ." ⁴⁶ those who were concerned. Even the least show of resistance would be used as proof of the ". . . overbearing popularity of your Government ..." and as justification for changing the Rhode Island constitution.

⁴⁴ *Ibid.*, p. 392.

⁴⁵ Samuel Adams to Darius Sessions, 2 January, 1773, *Ibid.*, p. 397.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

Adams then directed his attention to the possible assignment of troops to Newport. Being sufficiently convinced that the purpose of the ministry was to vacate the charter of the Rhode Islanders, Adams doubted that troops would be called in. Why, he queried, would the commissioners request troops and thus expose ". . . such danger to their Reputation, if not their persons."⁴⁸ It would be easier for them to simply go through the motions, making nothing more ". . . than a Shew of a Readiness to execute their Commission. . . ." ⁴⁸ As Adams perceived, the *Gaspee* commission was a mere pretext, incidental and subordinate to the overriding motives of the ministry.⁵⁰

Having considered the options open to the legislature, Adams presented the course of action which he considered most effective:

. . . I think it may be justly concluded that since the Constitution is already destined to suffer unavoidable Dissolution, an open & manly Determination of the Assembly not to consent to its ruin would show to the World & posterity that the people were virtuous though unfortunate, & *sustained the Shock* with Dignity.⁵¹

Adams urged the Rhode Islanders to remain firm, since any reluctance to meet the threat to the colony's charter would serve as precedent for other

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.* Adams' opinion is open to dispute. Gage appeared to be disappointed when the commissioners ultimately failed to produce indictments. Esek Hopkins had also made references to British officers in the royal navy forcing people off boats in an attempt to gain proof for indictments.

⁵¹ *Ibid.*

colonies.⁵²

He presented two broad plans which Rhode Islanders might pursue. In the first, the Governor would forego assembling the Commissioners on the pretext that the General Assembly advised against such action which might set a dangerous precedent for future commissions of inquiry. The Governor could effectively argue, he reasoned, that a Rhode Island grand jury could just as well inquire into, and procure indictments, as the commissioners could. The Governor could further point out ". . . the odious light in which the Commission is viewed . . .,"⁵³ as well as the fact that such a commission could have dangerous repercussions in Rhode Island.

If these delaying tactics were used, thought Adams, in the meantime a European war might detract England's interests away from Rhode Island. For Adams, the possibility of the Governor's petition going before Parliament was not undesirable either, since it might be received by that body with surprising objectivity. He reasoned that Rhode Island's objection to the commission might be interpreted not so much as "Opposition to the Authority of Parliament"⁵⁴ but rather support for ". . . the sacred Importance of Charters upon which many of the Members hold their seats. ..." ⁵⁵

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, p. 399.

In a second proposal Adams entertained the proposition that the commissioners might decide to convene without the Governor. But he seriously doubted that they would consider such a move, for they would invite the scorn of all colonials and they ". . . would be answerable for the fatal Effects that might follow such a forwardness all the world and Posterity will Judge. . ." ⁵⁶ He concluded by reminding Rhode Islanders that England was intent upon provoking open defiance to the imperial Government:

Upon the whole it is my humble Opinion, that the grand Purpose of Administration is either to intimidate the Colony into a Compliance with a Measure destructive of the freedom of their Constitution, or to provoke them to such a Step as shall give a pretext for the Vacation of their Charter which I should think must sound like Thunder in the Ears of Connecticut especially. Whatever Measures the Wisdom of your Assembly may fix upon to *evade* the impending Stroke, I hope nothing will be done which may be the invention of our Adversarys, be construed as even the Appearance of an Acquiescence in so grasping an Act of Tyranny.⁵⁷

As an afterthought, albeit an important one, Adams suggested utilization of the circular letter. It could be argued that such a letter would

. . . to the Advantage of the General Cause & of Rhode Island in particular; I should think it would induce each of them, at least to injoin their Agents in Great Britain to represent the Severity of your Case in the Strongest terms.⁵⁸

Adams wrote one final letter to his Rhode Island colleagues in February. That neither the Rhode Island legislature, nor Governor Wanton should

⁵⁶ *Ibid.*, pp. 399-400.

⁵⁷ *Ibid.*, p. 400.

⁵⁸ *Ibid.*, p. 401.

lend any legitimacy to the Commission's authority, was his primary concern:

As I am informd the Commissioners are all now in Newport, and your Assembly is to meet this day I am anxious to know precisely the Steps that are or shall be taken by each. I hope your Governor will not think it proper for him *to act* in the Commission if the others should determine so to do. Will it not be construed as conceding on his part to the Legality of it? ⁵⁶

Seeking advice on much the same question which they had raised before Adams, the special committee of the General Assembly decided to communicate with John Dickinson of Pennsylvania. Dickinson had gained respect throughout the colonies with the publication of his "Letters from a Farmer in Pennsylvania to the Inhabitants of the British Colonies." Hopkins, Sessions, Brown and Cole were calling upon him as a distinguished American whose involvement in their cause could only add prestige to it.

The four Rhode Islanders explained the main reasons which had led them to seek out Dickinson's counsel. They believed that the *Gaspee* affair and the forthcoming commission of inquiry effected the interests of all the colonies. They regarded Dickinson as a proven defender of liberties. They wanted to give him "Authentick Intelligence" so that he could have the most complete data at his disposal before advising them accordingly.⁶⁰

The majority of their report to Dickinson was taken up with a lengthy

⁵⁹ Samuel Adams to Darius Sessions, February, 1773, *Ibid.*, II, 427.

⁶⁰ Darius Sessions, Stephen Hopkins, Moses Brown and John Cole to John Dickinson, Providence, January, 1773, Item 25: Packet of Letters endorsed from 1774-1775, 19 documents. Robert R. Logan Deposit of Dickinson Family Papers at Library Company of Philadelphia in custody of Historical Society of Pennsylvania.

quotation from Lord Dartmouth's letter in which the Secretary identified the destruction of the *Gaspee* as a crime of high treason and made provisions for possible military intervention at Newport if needed. The Assembly had taken the liberty to italicize a portion of the letter: ". . . Persons Concerned, in the burning of the Gaspee Schooner, and in other Violence, which attended that daring insult, *should be brought to England to be Tried. . .*" ⁶¹ Indirectly they reflected Adams' fears concerning the possibility of the crown's vacating the charter of the colony:

. . . the Ministry has made the Destruction of the Gaspee a Pretence, for Introducing a Precedent, of Depriving his Majestys Subjects in America, of the Legal manner of Tryalls and Introducing Instead thereof, such a manner of Tryal as is shocking to Humanity, that they have taken this opportunity to make an Inroad upon the Liberties of America; by beginning upon the smallest and weakest Colony in it. ⁶²

Either Dickinson did not respond to their letter, or his reply did not survive.

The wide exposure which Governor Wanton and the legislature had given to Dartmouth's letter most certainly helped to solidify support for the Rhode Island cause. Probably the most important reaction by an individual was the response of a Bostonian, the Reverend Mr. John Allen, minister of the Second Baptist Church in that city. ⁶³ His reaction was expounded at length in a sermon entitled, "An Oration Upon the Beauties of Liberty, Or the Essential Rights of Americans." ⁶⁴ Allen prefaced his sermon with an open letter

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ While the sermon was delivered on December 3, the open letter to Lord Dartmouth had to be delivered some time after its release to the papers in January. In his article, William Leslie confuses the dates of the sermon and the open letter.

⁶⁴ I used a copy in Edwards, Rhode Island Historical Society.

to "the Right Honorable the Earl of Dartmouth."

For the Reverend Mr. Allen the greatest outrage was the possibility of England's trying Rhode Islanders overseas. Stating the unconstitutionality and immorality of such trials, he used the Rhode Island charter as the basis of his argument. By their charter, Rhode Islanders were granted the right to trial in the vicinage as a prerequisite for banishment or disinheritance.⁶⁵ Beyond that, they were entitled, presumably, to the same rights as people in England. If Englishmen were privileged to enjoy trials in the vicinage, why were these same rights denied to the King's American subjects? Allen asked:

Are not the Liberties of the free-born *American Rhode-Islanders* as dear to them as the Britons? Have they not their own laws, judges, and juries to defend and determine their rights? Suppose a Nobleman had broke the laws of his King and country; would he not be willing nay, had he not an undoubted *right* to expect to be tried by a jury of his peers, according to the laws of the land? How would he like to be fettered with irons, and dragged three thousand miles in a hell upon water (a man of war) to take his trial? Is not this contrary to the spirit of the law, and the rights of *Englishmen*?⁶⁶

He indicated great concern over the establishment of courts which he erroneously referred to as "new Courts of Admiralty."⁶⁷ They would supersede the courts of judicature which were created to decide matters

⁶⁵ He argued that taking a man to England by force without legal recourse within the colony, amounted to banishment. Although he mentions that he was quoting the Rhode Island charter, it was a statute of 1664 which Allen really had in mind.

⁶⁶ "An Oration Upon the Beauties of Liberty, or the Essential Rights of Americans," Edwards. Gaspee Papers, Rhode Island Historical Society.

⁶⁷ *Ibid.*

between the King and his subjects.⁶⁸ All the more regrettable was the sanctioning of such courts by the new secretary of state, a man ". . . from whom we might have expected mildness, mercy, and a defence of the rights and liberties of the people,"⁶⁹ Instead Dartmouth had proved a great disappointment.

From the position that the rights of Englishmen extended to all subjects of the King, to the dichotomous posture that England and America were separate legal jurisdictions, the Reverend Mr. Allen's argument moved swiftly. Alluding to the burning of the *Gaspee* by the Rhode Islanders, he queried:

Has he *offended*? Yes, Is he willing to be tried by his own laws? Yes. Then that man, that King, that Minister of State, (be he who he will) is worse than a *Nero-Tyrant* that shall assume to drag him three thousand miles to be tried by his *enemies*.⁷⁰

He concluded:

For my part, I cannot see how any man in America can be said to break the laws of *England*. The whole lies here; the laws of America only are broke; let the offender then be tried by the law which he broke. . . ." ⁷¹

Allen argued that if anyone had broken the laws, the British government had done so by sending the *Gaspee* to patrol Rhode Island waters:

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

Some persons would be glad to know what right the King and Ministry have to send an armed schooner to *Rhode-Island*, to take away the privilege of the people, any more than they have to send an armed schooner into *Brest*, and demand the property of *France*.⁷²

In the final passages of his sermon, Allen asked the inevitable and broader question--whether the King had any right to reign in America in the first place:

However, if there is any law broke, the *Gaspee* Schooner, by the power of the *English* Ministry and Admiralty, have broke it, by taking away the Liberties of the *Americans*. And yet must the *Americans* be punished for it contrary to their own laws, O! Amazing! Some would be glad to know, my Lord, what right the King of England has to reign over America? It cannot be an hereditary right that lies in *Hanover*: It cannot be a parliamentary right that lies in Britain; not a victorious right for the King of *England* never conquered America than what the people have, by compact, invested him with, which is only a power to protect them, and defend their rights civil and religious; and to sign, seal, and confirm, as their King, such laws as the people of *America* shall consent to. If this be the case, my Lord, then judge whether the Admiralty or the Ministry are not the transgressors in this affair, by sending armed Schooners to *America*, to take by power and sword the people's property. And if any are to be tried for law-breaking, it surely ought, in justice, to be those who broke them.⁷³

He ended his sermon with reference to General Thomas Gage and his directive from the Secretary of War to proceed to Rhode Island, when and if called upon, ". . . to assist this assumed Court of Admiralty to destroy the rights of the people."⁷⁴ The use of troops is ". . . enough to make nature shudder and stand stagnated as a testimony against ministerial bloody power."⁷⁵ Allen ended his sermon by imploring Dartmouth to protect

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

Americans' "birthright blessings," and signed himself a *British Bostonian*.⁷⁶ The sermon's wide circulation was evident in the numerous printings which followed. Four editions were issued in Boston, three in New London by 1773, and one edition in Wilmington, Delaware, in 1775.⁷⁷

Popular reaction, whether in the press or private correspondences, indicated the great interest in the commission of inquiry. Coverage by the two local newspapers became more extensive toward the end of the year, 1772, more than likely the result of greater availability of information. The arrival of the state department packets precipitated the proliferation of newspaper accounts. The issue of the *Mercury* for December 21, for the first time, abounded with a variety of news reports concerning the commission of inquiry.

The greatest outcry was raised against overseas trials and the possible utilization of the military:

The idea of seizing a number of persons, under the points of bayonets, and transporting them three thousand miles for trial, where, whether guilty or innocent, they must unavoidably fall victims alike to revenge or prejudice, is shocking to humanity, repugnant to every dictate of reason, liberty and justice, and in which Americans and freemen ought never to acquiesce.⁷⁸

⁷⁶ *Ibid.*

⁷⁷ William R. Leslie, "The Gaspee Affair: A Study of Its Constitutional Significance," *The Mississippi Valley Historical Review*, XXXIX, No. 2 (September, 1952). 250. Walter Edwards cited three Boston editions, one at New London, Connecticut in 1773, and a fifth edition at Hartford, Connecticut in 1774. In any event, the pamphlet reached a wide reading public.

⁷⁸ *Newport Mercury*, 28 December, 1772.

These trials raised a series of disturbing possibilities, among them violation of ancient British liberties enunciated in Magna Charta, as well as violations of Rhode Island's charter.⁷⁹ In both instances, overseas trials denied the right of the accused to a trial in the vicinage in addition to depriving the colonial justices of the right of jurisdiction,

In an article which was reprinted from a Boston newspaper, the *Newport Mercury* quoted an early statute of the colony which substantiated the illegality of overseas trials insofar as they violated Rhode Island law:

Be it enacted, that no freeman shall be taken, or imprisoned, or deprived of his freehold, or liberty, or free custom, or be outlawed, or exiled, or otherwise destroyed, nor shall be passed upon, judged, condemned, but by the lawful judgement of his peers, or by the law of this colony. And that no man, of what estate and condition soever, shall be put out of his lands and tenements, nor taken, nor imprisoned nor disinherited, nor banished, nor any ways destroyed or molested, without being for it brought to answer by one course of law.⁸⁰

The Boston reprint further claimed that the royal commission also violated the charter of Rhode Island, by impinging upon the jurisdiction of the local courts. For was it not possible for a Rhode Island grand jury to accomplish as much as the royal commission whose constitutionality was precarious at best?⁸¹ A precedent from the seventeenth century was called to

⁷⁹ Samuel Adams was one who cited Magna Charta in condemning overseas trials. Samuel Adams to Darius Sessions, 28 December, 1772, Harry Alonzo Cushing, ed., *The Writings of Samuel Adams* (New York: G. P. Putnam's Sons, 1904-1908), II, 390.

⁸⁰ *Newport Mercury*, 28 December, 1772.

⁸¹ The arguments expressed in this article bear much resemblance to the points enumerated in the three letters which Adams sent to the legislative committee in Rhode Island.

the attention of the readers. In that instance, another royal court, the Carr commission, violated the rights of the people of Massachusetts Bay and restricted the jurisdiction of their charter.⁸²

In 1664, Charles II had appointed a four man commission consisting of Sir Robert Carr, the presiding officer, and three others.⁸³ They were instructed to visit all the New England colonies, to hear a wide variety of complaints, and to try all cases. Particular attention would be given to incursions by the colony of Massachusetts Bay against the navigation acts. The real purpose of the commission, was to compel Massachusetts Bay to submit to the commercial system which Charles and his ministers had mapped out for the North American colonies.⁸⁴

While cooperation was forthcoming from Connecticut, Rhode Island, and New Plymouth, Massachusetts Bay refused to recognize the authority of the commission to hear cases in that colony--a concession which would have circumscribed the power of the General Court, the colony's highest tribunal. Such a development would ultimately impair the powers of the colony's charter. The Carr Commission was a pretext for limiting the autonomy of the colony. Some people in Massachusetts Bay had come to view the royal

⁸² *Newport Mercury*, 28 December, 1772. *Massachusetts Gazette and Boston Newsletter*, 24 December, 1772.

⁸³ The three others were Colonel Richard Nicolls, George Cartwright, and Samuel Maverick.

⁸⁴ George L. Beer, *The Old Colonial System, 1660-1754* (New York: Peter Smith. 1933). II. 244.

⁸⁵ *Ibid.*, 243, 244, 250.

commission in Rhode Island, about to convene, in the same light.

The substitution of a commission for a "grand jury of inquest for the same county . . ." ⁸⁷ was deplorable to a writer in the *Newport Mercury*, who was not assuaged by the fact that the members of the commission were colonials. For him it was little consolation "*. . . that five gentlemen, four of whom are of superior rank in different colonies, the other indeed a judge of the admiralty, are appointed by commission to make the inquiry.*" ⁸⁸

The argument was also raised that the North ministry was attempting to punish all Rhode Islanders, and assigning collective guilt in the destruction of the schooner:

To have a set of crown officers commissioned by the ministry, supported by ships and troops to inquire into offences against the crown, instead of the ordinary and constitutional method of a grand jury, carries an implication that the people of that colony were all so deeply tinctured with rebellious principles, as that they are not to be trusted by the crown. ⁸⁹

Bostonians could empathize with Rhode Islanders who were being threatened with "ships and troops." Was it not Boston which only two years before had experienced the wrath of the ministry? Was it not British troops who had killed innocent civilians? And should the ministry be called into Rhode Island,

⁸⁶ *Newport Mercury*, 28 December, 1772. *Massachusetts Gazette and Boston Newsletter*, 24 December, 1772.

⁸⁷ *Newport Mercury*, 28 December, 1772,

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

who could presume that the same thing would not occur there? In desperation the Boston writer implored, "How long—O Lord--How long!"⁹⁰

Letters ~~from Rhode Islanders~~ **published in Rhode Island newspapers** also condemned the royal commission. "Americanus" probably reflected the fears of many of his countrymen when he stated that the convening of the court was more serious than the Stamp Act crisis, and an arbitrary invention of the ministry:

A court of inquisition, more horrid than that of Spain and Portugal, is established within this colony, to inquire into the circumstances of destroying the *Gaspee* schooner, and the persons who are the commissioners of this newfangled court are vested with most exorbitant and unconstitutional power.--They are directed to summon witnesses, apprehend persons not only impeached, but even suspected! And them, and every of them to deliver to Admiral Montagu, who is ordered to have a ship in readiness to carry them to England where they are to be tried.⁹¹

"So much has transpired," he concludes, "respecting this alarming Star-Chamber inquisition."⁹² The fears of "Americanus" were also shared by the Reverend Mr. Stiles who observed that since the burning of the *Gaspee* was ". . . Infra Comitatus Limites or with the Land Jurisdiction of the Colony, such a Court takes the Trial out of the Vicinage, and the transporting &c. is alarming to the whole Continent."⁹³

⁹⁰ *Ibid.* *Providence Gazette*, 26 December, 1772.

⁹¹ *Newport Mercury*, 21 December, 1772.

⁹² *Ibid.* "Americanus" had over-reacted; the indicted persons would not be sent to England without the concurrence of the Rhode Island Superior Court. Such would be the policy decided upon by the five commissioners as they interpreted their instructions from the King.

⁹³ Dexter, *Stiles Diary*, I, 324.

Indeed, the whole continent was informed to some extent, and greatly fearful of the foreboding outcome of the commission's deliberations. Because of the distance of the southern colonies from New England, southern public reaction was minimal initially, and the papers did not print stories until late January.⁹⁴ From Pennsylvania northward, the interest of the press was evident. Two of Pennsylvania's papers, the *Pennsylvania Gazette* and the *Pennsylvania Chronicle and Universal Advertiser* carried articles with a Boston **dateline** of December 14, bemoaning the arrival of a ship from England with dispatches for Admiral Montagu, followed by the dispatching of two royal vessels to Rhode Island; it was rumored that more would be sent. Indeed, ". . . the Admiral is to hoist his flag on board one of the men of war, and proceed himself for that place [Rhode Island], in consequence of some important dispatches from England."⁹⁵

The same interest, perhaps apprehension, was also apparent in New York. William Smith, a colonial educator and clergyman, had recently spoken with one of the commissioners from New York, Daniel Horsmanden. The Chief Justice had told Smith

⁹⁴ Purdie's *Virginia Gazette* did not carry stories relating to the *Gaspee* burning or the commission until the latter part of January.

⁹⁵ *Pennsylvania Chronicle and Universal Advertiser*, 26 December, 1772.

⁹⁶ Harris Elwood Starr, "William Smith." *Dictionary of American Biography*, Dumas Malone, ed. (New York: Charles Scribners Sons, 1935), XVII, 353.

... a Week before, that they were to send Home the Accused as Traitors, & report concerning the Conduct of the Colony: and he afterwards was present in Council when I informed those present, that he has so declared, and did not deny it. Oliver De Lancey upon hearing the Nature of the Comm. discovered his Disgust at it. I conclude that the Party will again set up the Cry of Liberty.⁹⁷

De Lancey, again, voiced his dislike for the commission on New Years Day while dining with the New York Governor, William Tryon. According to Smith, De Lancey "... did not like the Comm., now executing at Rhode Island, nor what was to be done under it. . ." ⁹⁸ The *Gaspee* as a topic of interest and concern was apparent as well among conversations of Colonel Philip Schuyler, De Lancey and Governor Tryon.⁹⁹

Smith had also spoken with a friend, Thomas Wooldridge, who had written a letter to Dartmouth with Smith's permission. He had recounted some of Smith's opinions concerning the royal commission.¹⁰⁰ The substance of the letter concerned misgivings voiced by some colonial justices touching upon the consequence's of the commission of inquiry.¹⁰⁰

Reaction in the New England colonies was spirited. It was readily evident in the attitudes and ideas of Samuel Adams, expressed in the several letters which he had written to the General Assembly committee. Another

⁹⁷ William Smith, *Historical Memoirs from 16 March 1763 to 9 July 1776 of William Smith*, William H. Sabine, ed. (New York: Colburn & Tegg, 1956), p. 136.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Thomas Wooldridge to the Earl of Dartmouth, New York, 4 January, 1773, *Historical Manuscripts Commission*, Fourteenth Report, Appendix, Part X, *Dartmouth Manuscripts*, Vol. II: *American Papers*, p. 127.

Bostonian, John Adams, took notice of this interest in Rhode Island's fate. He commented that the royal commission was ". . . the present Topick of Conversation."¹⁰² He also observed that because of the ". . . great Distress" of the Rhode Islanders, they had ". . . applied to their Neighbours for Advice, how to evade or to sustain the Shock."¹⁰³ John Adams clearly made known his own attitudes toward the commission, comparing it to a "Star Chamber Court" and a "Court of Inquisition." Referring to a conversation he had had with an English gentleman, he noted in his diary with glee:

. . . I found the old warmth. Heat, Violence, Acrimony, Bitterness, Sharpness of my Temper, and Expression, was not departed. I said there was no more justice left in Britain than there was in Hell--That I wished for War, and that the whole Bourbon Family was upon the Back of Great Britain. . . .¹⁰⁴

Amidst the vocal reaction to Lord Dartmouth's letter and to the impending royal commission the preparations, which had commenced after Captain Howe's arrival, now continued. As plans unfolded the mood in Rhode Island became tense in anticipation of what was about to take place. Admiral Montagu's initial preparations were responsible for much of the anxiety. The Admiral's superiors in England had instructed him to repair to Rhode Island and to assist the commissioners and maintain order with those ships which he

¹⁰² L. H. Butterfield, ed., *The Adams Papers: Diary and Autobiography of John Adams* (New York: Atheneum, 1964), II: *Diary, 1771-1781*, p. 73.

¹⁰³ *Ibid.*,

¹⁰⁴ *Ibid.*, p. 76.

considered necessary.¹⁰⁵ A Boston account noted that ". . . the ships are now getting ready as fast as possible; they were kept to work all day yesterday, and commanded to be ready to sail on Tuesday afternoon, or Wednesday morning at farthest."¹⁰⁶

By December 14 Montagu had sent three vessels ahead of him to Rhode Island: the *Lizard*, the *Halifax* and the *Arethusa*. By the end of the month, these three would be stationed in the colony along with the *Cruizer* which had conveyed the messages from England, and two others, the *Mercury* and *Beaver* which serviced Rhode Island routinely.¹⁰⁷ The vessels would be used to confine any indicted persons. Witnesses would also travel aboard these ships for England. The presence of so many vessels at Newport might also serve as a deterrent to any civil disobedience.

If Montagu's objective was to create fear and to intimidate Rhode Islanders, he had succeeded. A Boston correspondent writing to his friend in Newport, observed derisively that Montagu was " ... in very high spirits on the occasion, and cheerfully undertakes an expedition which promises to gratify his rancour against your colony . . ." ¹⁰⁸ An English

¹⁰⁵ Lords of the Admiralty to John Montagu, 7 September, 1772, Admiralty Out Letters 98, folio 64, Edwards, Gaspee Papers, Rhode Island Historical Society.

¹⁰⁶ *Newport Mercury*, 21 December, 1772.

¹⁰⁷ Admiral John Montagu's Journal, 11, 14, 28 December. 1772, Edwards, Gaspee Papers. Rhode Island Historical Society. The *Swan* sloop was also mentioned. *Newport Mercury*, 4 January, 1773 and *Providence Gazette*, 19 December, 1772.

¹⁰⁸ *Newport Mercury*, 21 December, 1772.

observer had commented to a friend in Boston that the actual apprehension of suspects involved in burning the King's schooner would be conducted by ". . . this hectoring commander and his gallant squadron. . . ." ¹⁰⁹ These observations were reprinted in the *Newport Mercury*. Newport's diarist, Ezra Stiles, observed with misgiving that "The Ships of War make a formidable Parade in the Harbor—preparing for the grand Court of Inquiry . . ." ¹¹⁰

In addition to the number of vessels, the Admiral himself instilled fear among many. A Boston gentleman informed his Newport friend that Montagu was ". . . determined to lay your town and Providence in ashes; he swore by God (some time ago) that he would burn the town of Providence to ashes. Mr P---- of this town, will attend to it; hope you will try him for treason." ¹¹¹ The story created disquietude among the members of at least one distinguished business concern, Nicholas Brown and Company.

Writing to Nathaniel Coffin of Nantucket, the Brown associates observed that they had been informed that Coffin ". . . & some others heard Admiral Montagu Say he wo'd Burn Providence or Newport or both to Ashes . . ." ¹¹² They wanted Coffin to state his story in writing before a justice of

¹⁰⁹ *Ibid.*

¹¹⁰ Dexter, *Stiles Diary*, I, 324.

¹¹¹ *Providence Gazette*, 26 December, 1772.

¹¹² Nicholas Brown and Co., to Nathaniel Coffin, Providence, 28 December, 1772, Brown Papers, American Manuscripts, John Carter Brown Library, Brown University.

the peace. They intended to use it against the Admiral if the need arose.¹¹³ Several days later, Coffin related disappointing news to Nicholas Brown and his associates. He said, "I did not hear him say he would Burn Either Newport or Providence, I fear it would be unsafe for one to Say it[.]"¹¹⁴

The presence of additional ships of war, and the rumor of a "hectoring commander" threatening to burn Rhode Island's two major cities, were not the only instances contributing to the public alarm in Rhode Island. Preparations by General Gage fanned apprehensions as well, since the possibility that he would detail troops to Newport was very real. As early as June 1772 General Gage in New York, upon hearing of the burning of the schooner, had written to the Admiral proffering assistance whenever demanded. Montagu thanked Gage for his pledge.¹¹⁵ Such reports that regiments were being considered for use at Newport were therefore not without foundation, and their numbers proliferated in the two local newspapers.¹¹⁶ The *Providence Gazette* found ". . . the idea of seizing a number of Persons, under the Points

¹¹³ *Ibid.*

¹¹⁴ Nathaniel Coffin to Nicholas Brown and Co., Nantucket, 6 January, 1773, Brown Papers, American Manuscript, John Carter Brown Library, Brown University.

¹¹⁵ Thomas Gage to John Montagu, New York, 19 June, 1772, Gage Papers, American Series, Volume III, William L. Clements Library, University of Michigan. John Montagu to Thomas Gage, Boston, 25 June, 1772, Gage Papers, American Series, Volume CXII, William L. Clements Library, University of Michigan,

¹¹⁶ *Providence Gazette*, 19 December, 1772; *Newport Mercury*, 21 December, 1772.

of Bayonets . . . " (to say nothing of overseas trials), ". . . shocking to humanity." ¹¹⁷

On December 20, Gage had written to Colonel Leslie, commander of the 65th Regiment, asking his opinion pertaining to the feasibility of taking that regiment from Halifax and transporting it elsewhere, perhaps to Rhode Island, at such an unseasonable time of year.¹¹⁸ In another letter of the following day, he shared his opinions with Leslie:

I readily believe the commissioners would be glad of Troops to protect them, tho' I doubt their application 'till they see the necessity of it, and in all circumstances I apprehend the vote for such an application will not pass unanimously. You will observe [torn: In my letter of yesterday?] that I have my suspicions that the aid of troops may possibly be demanded. I am glad that the admiral is to be at Newport, his presence will be a proper check upon People's conduct, and I hope prevent the Enquiry into the infamous Behavior of the People there, from being negligently or slightly conducted, and that their Transactions may be laid before the Publick in a true Light, and the offenders meet with the Punishment they deserve.¹¹⁹

Obviously, Gage was deeply convinced that the tense mood in Newport would incline the commissioners toward glossing over the *Gaspee* investigation; **and**

¹¹⁷ *Providence Gazette*, 19 December, 1772. For additional references concerning the use of troops see Esek Hopkins to Abraham Whipple, Providence, 5 January, 1773, Abraham Whipple Papers, William L. Clements Library, University of Michigan.

¹¹⁸ Thomas Gage to Colonel Leslie, New York. 20 December, 1772, Gage Papers, American Series, Volume CXVI, William L. Clements Library, University of Michigan.

¹¹⁹ Thomas Gage to Colonel Leslie, New York, 21 December, 1772, Gage Papers, American Series, Volume CXVI, William L. Clements Library, University of Michigan.

his appraisal of the Newporters was shared by crown officials who had suggested military assistance in the first place.

Admiral Montagu was perhaps as fearful of Rhode Islanders as they were of him and Gage. He had requested that Governor Wanton grant special immunity to Captain Robert Keeler who was ". . . often made a prisoner from frequent arrests he meets with as well as insults when he comes on shore . . ." ¹²⁰ The Governor placed this request before the legislature. With great pique the *Newport Mercury* swore that Keeler had never ". . . received the least imaginable insult . . ." while on shore and they challenged him publicly to prove that ". . . one single attempt was ever made to insult him in this town?" ¹²¹

In addition to the preparations of the Admiralty, Governor Wanton had acted quickly to execute his instructions from the state department, even though Captain Keeler had observed that as of December 20, the Governor had taken no action regarding Lord Dartmouth's dispatches. ¹²² This was not true. On December 14, the very day he received his dispatches from Dartmouth, Wanton notified one of the Massachusetts commissioners, Peter Oliver, of his appointment. ¹²³ Robert Auchmuty, the other Massachusetts

¹²⁰ John Montagu to Joseph Wanton. Boston, 11 December. 1772. Staples, *Documentary History*, p. 23. University microfilms, American Culture Series, University of Michigan.

¹²¹ *Newport Mercury*, 21 December. 1772.

¹²² Montagu's Journal, 20 December, 1772. Edwards, Gaspee Papers, Rhode Island Historical Society. Joseph Wanton to Peter Oliver, Newport, 14 December. 1772. Staples. *Documentary History*, p. 23.

¹²³ *Ibid.*

commissioner, did not wait for Governor Wanton to communicate with him. He wrote Wanton with enthusiasm that he would be ready to come to Newport as soon as the decision was made to convene the commissioners.¹²⁴

Communicating with Montagu on the 14th. Wanton acknowledged receipt of the dispatches. He also told the Admiral that he would soon appoint a time for the first meeting at Newport, and that he planned to have the King's proclamation printed immediately and distributed to towns throughout the colony.¹²⁵ On December 22, in a circular letter to the sheriffs of the several towns, Wanton urged the law officers to ". . . affix [the Proclamation] in the most public places of the several towns within your county."¹²⁶

By December 24 Governor Wanton learned that the two commissioners from New York and New Jersey had made arrangements for their passage to Newport. He passed this information on to Auchmuty and Oliver, commenting that he was ready to receive them whenever it suited their

¹²⁴Robert Auchmuty to Joseph Wanton. Roxbury, 11 December, 1772, Staples, *Documentary History*, p. 23.

¹²⁵Joseph Wanton to John Montagu, Newport, 14 December, 1772, Staples, *Documentary History*, p. 23, University microfilms, American Culture Series, University of Michigan.

¹²⁶Joseph Wanton Circular to the Sheriffs of the several towns, Newport, 22 December, 1772. Staples, *Documentary History*, p. 24. University Microfilms, American Culture Series, University of Michigan. In January the General Assembly voted money to the printer of the *Newport Mercury*, Solomon Southwick, for printing ". . . proceedings of the General Assembly, Proclamations, &c." Rhode Island Colony Records. December Session, Vol. IX, Rhode Island State Archives.

convenience.¹²⁷ On December 31, Auchmuty set out with his servant in a rented sulk for Oliver's residence in Middleborough, some distance south of Boston.¹²⁸ Justices Smythe and Horsmanden and Mrs. Horsmanden contracted passage to Newport aboard the sloop *Lydia*, John Freebody master, with whom they departed from New York on Tuesday, December 29.¹²⁹ One New Yorker observed ". . . that it mattered little whether Horsmanden & his Wife ever returned."¹³⁰ They arrived in Newport Thursday, December 31. Judges Oliver and Auchmuty arrived on Saturday, January 2.¹³¹

¹²⁷ Joseph Wanton Circular to the Judges Oliver and Auchmuty, Newport, 24 December, 1772, Staples, *Documentary History*, p. 23, University Microfilms, American Culture Series, University of Michigan,

¹²⁸ Account of Disbursements by Peter Oliver in Execution of His Majesty's Commission of Inquiry relative to the Destruction of the Schooner Gaspee in Rhode Island. An Account of my Expenses in the Execution of His Majesty's Commission to me and other Gentlemen [Auchmuty], April 15, 1774, Colonial Office, 5:1285, proprieties, folio 505-08, Edwards, Gaspee Papers, Rhode Island Historical Society. *Massachusetts Gazette and Boston Newsletter*, 31 December, 1772.

¹²⁹ Joseph Wanton to John Montagu, Newport, 24 December, 1772, Staples, *Documentary History*, p. 24., University Microfilms, American Culture Series, University of Michigan. A report in the January 4 issue of the *Newport Mercury* purported that the two judges came in the *Lydia*. Another reference corroborates this account. However a third reference mentioned that the judges bought passage with Captain Johnson and that they rented his cabin for 12 guineas. The captain of the *Lydia* was named Freebody. *Newport Mercury*, 28 December, 1772 and 4 January, 1773.

¹³⁰ Smith, *Memoirs*, p. 136.

¹³¹ Joseph Wanton to John Montagu. Newport, 1 January, 1773, and Joseph Wanton to Robert Auchmuty, Newport, 1 January, 1773, Staples, *Documentary History*, p. 24, University Microfilms, American Culture Series, University of Michigan. *Newport Mercury*, 4 January, 1773.

In anticipation of the arrival of the commissioners from the middle colonies, Montagu had sent Captain Symonds to Newport on January 1. Symonds was to deliver the commission and instructions to Captain Robert Keeler, the senior officer of ships at Rhode Island. Acting on behalf of Admiral Montagu, Keeler would present them to the commissioners, and lend them his assistance. He was standing in for the Admiral who balked at having to make the trip to Rhode Island. Montagu gave as his reasons the inclement weather in Boston. Stiles thought it the result of injured pride and a disappointment at having not been made the principal luminary in the Newport proceedings.¹³² While the Admiral chose to leave his responsibilities to Keeler, he was quick to add that

... if the commissioners shall think it right, and for the good of the service they are upon, that my presence is necessary, I shall be ready to set out the moment I receive such notice from them. But I flatter myself they will be able to do so without me."¹³³

On January 5, the day appointed for the opening of the commission, Esek Hopkins of Providence told Abraham Whipple, one of the *Gaspee's* attackers that the commissioners had assembled at Newport, that indicted persons would be obliged to take their trials in England, that six vessels, with more expected, now occupied the harbor, with officers "... wo take all the

¹³² Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 346.

¹³³ John Montagu to Governor Wanton, Boston, 2 January, 1773, Staples, *Documentary History*, p. 24, University Microfilms, American Culture Series, University of Michigan.

hands out of the inward bound Vessels I Suppose in order to git profe and thair is 2
 Regement to be sent if aney—oposition should be offered. . . ." ¹³⁴ Hopkins was reluctant
 to speculate upon the consequences of the commissioners' meeting, but he hoped that ". . .
 all those consrnd [in the burning] will not come by water in to this port before the times
 alter. ..." ¹³⁵

General Gage reflected much the same apprehension:

. . . I firmly believe they will find no Magistrate who will regard or obey their Orders. I hope there
 will be no Riots or Insurrections, and I think there will not, but the more Subtle measures will be
 fallen upon to defeat the Enquiry. The Assembly it's said has met privately and their proceedings
 are secret. If the Commissioners should be obliged to apply for the Aid of the Troops I must no
 doubt send a Force to protect them, tho' I am confident, when the Troops arrive, that no Magistrate
 will ask their Assistance; nor do I believe they will give them Quarters. We shall in a short time
 know the Result of this Business. ¹³⁶

Whether troops would be called in depended both upon the restraint of Newporters and
 the sobriety of the commissioners.

¹³⁴ Esek Hopkins to Abraham Whipple, Providence, 5 January, 1773, Abraham Whipple
 Papers, William L. Clements Library, University of Michigan.

¹³⁵ *Ibid.*

¹³⁶ Thomas Gage to Lord Barrington, New York, 6 January, 1773, *The Correspondence of
 General Thomas Gage with the Secretaries of State, and with the War Office and Treasury, 1763-
 1775*, Clarence Edwin Carter, ed. (New Haven: Yale University Press, 1933), II, 632.

CHAPTER VIII

THE ROYAL COMMISSION OF INQUIRY AT NEWPORT

On an unseasonably warm Sunday for January, with temperatures reaching fifty degrees, Captain Symonds arrived at Newport with the commission and instructions. Boarding the *Mercury* he delivered his packet to Captain Keeler.¹ At noon on the following day, January 4, the five commissioners met together at the Colony House, a distinguished two-story red brick building on the town square. Since their meeting was an informal one, the commissioners did not receive the royal documents at this time. In fact, the Governor pondered whether it was proper to defer opening the session until the Admiral had arrived.² In the Admiral's absence Captain Keeler's attendance was requested.³ A disagreement among the commissioners and the British officers was one of the results of this meeting. The Reverend Mr. Stiles made mention of an exchange ". . . in which the Navy Officers shewed

¹ Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Franklin Bowditch Dexter, ed., *The Literary Diary of Ezra Stiles* (New York: Charles Scribners, 1901), I, 345.

² Joseph Wanton to Captain Keeler, Newport, 4 January, 1773, W. R. Staples, *The Documentary History of the Destruction of the Gaspee* (Knowles, Vose and Anthony, 1845), p. 24, University Microfilms, American Culture Series, University of Michigan.

³ *Ibid.*

some Loftiness; but the Judges with some Spirit quickly gave them to understand their Subordination." ⁴ Whatever the misunderstanding the commissioners decided to open their hearings the next day.

Late Tuesday morning, January 5, Captain Robert Keeler, with ". . . about a dozen officer of the Men o' War," forming two ranks, ". . . marched in procession up the Parade . . ." to the Colony House.⁵ They waited in the council chamber for the commissioners who arrived about 11:30 a.m. An impressive crowd assembled in the chamber to hear the Governor's naval officer, James Clarke, read the commission:⁶

George the Third, by the grace of God, of Great Britain, France, Ireland, King, Defender of the Faith, &c., to our Trusty and well beloved Joseph Wanton, Esquire, Governor of our Colony, called the English Colony of Rhode Island and Providence Plantations, in New England, in America; our trusty and well beloved Daniel Horsemanden, Esquire, our chief justice of our province of New York; our trusty and well beloved Peter Oliver, Esquire, our chief justice of our province of Massachusetts Bay, in New England; and our judge of our vice admiralty court, established at Boston, with jurisdiction in all causes arising within the limits of our colonies of New Hampshire, Massachusetts Bay, Rhode Island and Connecticut, greeting . . .⁷

⁴ Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 345.

⁵ Dexter, *Stiles Diary*, I, 330. *Newport Mercury*, 11 January, 1773. Commissioners to John Montagu, 5 January, 1773, John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England* (Providence, 1857), VII, 121. Stiles referred to the Colony House as the Courthouse.

⁶ Dexter. *Stiles Diary*. I, 330.

⁷ Royal Commission to the Commissioners of Inquiry, relative to the Destruction of the Gaspee," Bartlett, *Records*, VII, 108-110. The inclusion of Connecticut within the Jurisdiction of the Boston vice-admiralty district court was perhaps responsible for the earlier and erroneous idea that the Governor of Connecticut was one of the commissioners.

The commission described the surveillance of the colony's trade as the primary objective of Lieutenant Dudingston while he was stationed in Rhode Island. The document made reference to ". . . very many ill-disposed persons [who] dared, from time to time, in defiance of our laws and authority, to insult and otherwise hinder and obstruct . . ." Dudingston in his endeavors. The consummate insult had come on the evening of June 9 and early morning of June 10 when,

. . . great multitudes of people were assembled in our town of Newport, and places adjacent, in our said colony, and led on by two persons whom they called the head sheriff and the captain, and so proceeded in warlike manner, with armed boats, to attack our said schooner; and having dangerously wounded the said lieutenant, overpowered the crew, took, plundered and burnt our said vessel . . .⁸

Because the King and his ministers wished to know how such an offense could have materialized in the very town where the Governor resided, his Majesty had instructed his appointees ". . . to inquire into and report . . . a full and true account of all the circumstances relative to the attacking and burning of our said schooner. . . ." The document designated Newport as the location of the schooner's destruction, and this error had not gone unnoticed by the assembled audience of Rhode Islanders.⁹

⁸ *Ibid.*

⁹ Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 346. In a letter of June 16, 1772, Joseph Wanton told Lord Hillsborough of Dudingston's harassment of large and small merchants in Rhode Island port towns, ". . . and particularly, the town of Newport, its metropolis [the colony's], whose inhabitants are principally supplied with the necessities of life by water. . . ." Because Newport appeared to the town most inconvenienced by Dudingston's activities, and because two other vessels had been destroyed by Newporters, viz., the *St. John* and the *Liberty* the ministry might have assumed that Newporters destroyed the *Gaspee*.

In addition to a thorough examination of all "... insults and obstructions which have been given to the said Lieutenant Dudingston,"¹⁰ the commission was also instructed to investigate the preparations which had preceded the armed attack as well as the measures which had been taken by colonial magistrates for apprehending the conspirators. The commissioners were given full powers to summon any "persons, papers, and records" that might be of value to them. The Governor, Deputy Governor and other magistrates in Rhode Island were instructed "... to be in all things helpful, aiding and assisting ..." the commission.¹¹

When Clarke had finished reading, the spectators were ordered from the council chamber.¹² While some, including the ministry, had supposed that Newporters would offer resistance to the seating of the royal commissioners, no incident had in fact marred the opening session. On the contrary, the commissioners noted that the people "... behaved with great decency."¹³

¹⁰ Royal Commission," Bartlett, *Records*, VII, 109.

¹¹ *Ibid.*

¹² Dexter, *Stiles Diary*, I, 330.

¹³ Commissioners to the Earl of Dartmouth, 21 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. A printed copy appears in Bartlett, *Records*, VII, 159. The *Providence Gazette* reported that Commissioner Oliver (the article did not mention him by name) "... writes to his brother in this town [Boston], that they are received there with *great* respect, and that they are like to make that place their winter quarters--others write, that their motions are carefully watched, and that it is not probable they will be suffered to execute a Commission so inconsistent with their own and Magna Charta." *Providence Gazette*, 23 January, 1773,

The commissioners began their deliberations with the interpretation of the five articles in their instructions.¹⁴ In the first article they were delegated powers to inquire into and report upon the burning, along with ". . . all such other powers and authorities as are judged necessary for that purpose."¹⁵ In article two they were specifically instructed to uncover all the circumstances resting upon the vessel's destruction, the causes thereof, and the role of the civil magistrates in the affair.¹⁶

Article three dealt with the power and authority of the colony's

¹⁴ Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 346. "Royal Instructions to the Commission of Inquiry," Gaspee Commission Papers, Rhode Island State Archives, Bartlett, *Records*, VII, 110-12.

¹⁵ *Ibid.*

¹⁶ *Ibid.* Ezra Stiles spoke of two surprises in the commission and instructions; one being the error referring to Newport as the scene of the crime, and the other, the realization ". . . that they the Commissioners were impowered to inquire into and take Information concerning any Misdemeanors and Oppressions of the *Officers of the Navy and Customs*: This was a humbling stroke, very unexpected, and rendered them, not even the Admiral excepted, at the Mercy of all the Merchants, &c., whom they had Injured--for it is probable they had all to a man, by taking fees and bribes &c. become liable to a loss of Office—at least it was a Rod over them. By this the Tory Bellowing and insolence was hushed." Stiles was probably alluding to this clause in the commission and instructions, *viz.*, inquiring into all the circumstances. Lord Dartmouth's letter to Governor Wanton, however, was more explicit on this particular item. Perhaps Stiles derived his broader interpretation from the Dartmouth letter rather than from what he heard in the council chamber on the morning of January 5. Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 346.

courts. The King commanded the civil magistrates and officers of Rhode Island to arrest and commit to custody anyone concerned in the attack. Since the local justices were to be partners in this judicial process the commissioners were instructed

... from time to time, [to] communicate to the said civil officers and magistrates, such informations as you shall be able to collect, touching the persons concerned in that daring attack upon our authority and commission, to the end that they may be accordingly arrested and delivered to the custody of the commander in chief or our said ships and vessels in North America, pursuant to such directions as we have thought fit to give for that purpose.¹⁷

In the fourth article the King asked his appointees

... to ascertain with the greatest precision, whether the offence was committed and done within the body of the colony; and if so, within what county or district thereof; and if not so, in what other place the said offence was committed and done.¹⁸

Finally they were empowered to draw upon the assistance of the commander-in-chief of military forces in North America, in the event that "... any disturbance shall arise, with a view to obstruct you in the execution of your duty. . . ." ¹⁹

After examining their instructions the commissioners concluded that Admiral Montagu's presence was necessary. In supporting this contention, they utilized a section in their instructions stating that any persons who should

¹⁷ "Instructions to the Commissioners of Inquiry," Gaspee Commission Papers, Rhode Island State Archives.

¹⁸Ibid.

¹⁹Ibid.

be arrested as a result of the commissioners' inquiry, shall be "... delivered to the custody of the commander-in-chief of our ships and vessels in North America, pursuant to such directions as we have thought fit to give for that purpose."²⁰ On that basis, the commissioners wrote Montagu a letter requesting his presence in Newport.²¹

Swearing allegiance to the Sovereign was one of the customary practices of commissioners appointed by the King. Chief Justice Daniel Horsmanden administered the oath to Governor Wanton, who in turn swore in the other four members.²² Two secretaries were appointed, James Brenton (who had defended Dudingston the previous July) and James Clarke, the colony's naval officer.²³ Having convened nearly twelve hours before, they ended their long day with adjournment at 11:00 p.m., followed by supper at the home of one of the local residents.²⁴

²⁰ Commissioners to John Montagu, 5 January, 1773, Bartlett, *Records*, VII, 121. This is also printed in Staples, *Documentary History*, p. 26, University Microfilms, American Culture Series, University of Michigan.

²¹ *Ibid.*

²² Proceedings of the Commissioners, 5 January, 1773, Gaspee Commission Papers, Rhode Island State Archives, Staples, *Documentary History*, p. 25, University Microfilms, American Culture Series, University of Michigan.

²³ *Newport Mercury*, 11 January, 1773. James Clarke is not to be confused with Samuel Clarke who served as a messenger, delivering summonses for the commissioners. Brenton, the other secretary, served only a few days, before moving to Halifax. Joseph Wanton to the Earl of Dartmouth, Rhode Island, April 15, 1774. Colonial Office 5:1285. Folio 433-36. Papers Relating to the Gaspee, compiled by Walter A. Edwards, Rhode Island Historical Society.

²⁴ Dexter, Stiles Diary, I, 330.

The next morning, Wednesday January 6, they drafted an advertisement for *the Newport Mercury*, inviting anyone to appear before them with information concerning the *Gaspee* affair.²⁵ They adjourned until Thursday morning, at which time Governor Wanton presented his colleagues with correspondences sent to him previously. These letters referred to events prior to the burning of the schooner. Wanton also brought with him several other papers, particularly sworn depositions from various witnesses, many of whom had given their statements in the presence of the Deputy Governor the day after the attack.²⁶

One of the accusations in the King's commission was leveled against the Rhode Island civil officials and what was thought to be their questionable diligence in attempting to uncover the identity of the people who burned the *Gaspee* and wounded her commander. Rhode Island's leaders were therefore more than willing to meet with the commissioners and attempt to clear the name of the colony as well as their own reputations. Deputy Governor Sessions and Chief Justice Hopkins came to Newport for this purpose on the day the Commissioners convened. An unofficial meeting was arranged at the Newport residence of Governor Wanton. When the Deputy Governor later paid a visit to the Reverend Mr. Stiles, the cleric became knowledgeable of the substance

²⁵ Proceedings of the Commissioners, 6 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, p. 25, University microfilms, American Culture Series, University of Michigan.

²⁶ *Ibid.*, 7 January, 1773. Staples, *Documentary History*, p. 25.

of their talks. Referring to their meeting, he wrote:

The design of this was--that Mr. Sessions as Governor of one of the Chief Magistrates of the Colony, should notify the Commissioners that there had been no Neglect or Connivance in Government, that neither he nor any of the Civil Officers in Providence had knowledge of the Design of Violence to the Gaspee or her people till the next day, that he immediately issued Warrants, went in person &c. and took all measures that could legally be taken for detecting and bringing the perpetrators to Justice²⁷

With the exception of Peter Oliver, Frederick Smythe was probably the most ardent friend of the crown. He wished to know if the forthcoming Rhode Island grand jury intended to make inquiry into the attack. He was told, probably by Hopkins, that the legal procedure in Rhode Island was to charge grand juries with general inquiries rather than examination into specific charges.²⁸

Daniel Horsmanden asked questions also, but unlike Smythe's impersonal directness, the New York chief justice broached his queries "in a friendly manner . . ." ²⁹ When Horsmanden inquired about the real cause of the *Gaspee's* destruction, Sessions and Hopkins attributed it to the Lieutenant:

. . . the true Cause was the Insolence of Duddingston, his Rapine and desultory Management, which were such, and his Conduct in general so absurd, that in Truth they did not then believe that he had a King's Commission (supposing him to be only such another absurd piratical Servitor to the Navy and Customs³⁰

²⁷ Ezra Stiles to Rev. Elihu Spencer, at Trenton. New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I. 346.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*, 346-47.

A tacit understanding among the commissioners and the Rhode Island officials was one of the most important results of their discussions. The commissioners allayed the fears of Sessions and Hopkins by assuring them that no one would be arrested or delivered to the Admiral, by anyone other than the regular judicial officials in the colony.³¹ The commissioners were construing their powers rather narrowly. Few could charge that they intended to circumvent the local courts in Rhode Island. Although Stiles described the wording of the commission to be like ". . . the Oracles of Appolo, somewhat ambiguous and indeterminate . . .", he noted optimistically of the commissioners:

There became reason to think that the *Commissioners themselves did not and would not understand themselves clearly impowered to take up and commit to the Admiral alone and by themselves: but that if such a Transaction should proceed from them, it should however proceed upon, in and by the executive internal Judiciary Authority of this Colony--Jurisdiction and not without it.* I do not say the Commissioners communicated this. It is enough that Gov. Sessions and Chief Justice Hopkins were made assured of it.³²

At the official request of the commissioners, Sessions and Hopkins made their appearance on Thursday, January 7. The Deputy Governor gave his assurance that he had done all within his legal power to bring the offenders to Justice. Hopkins made a similar pledge to try any suspects who were duly indicted by the commissioners.³³ Hopkins and Sessions assured the Governor

³¹ *Ibid.*, 347.

³² *Ibid.*

³³ *Ibid.*, 346.

and his four colleagues that they intended to deliver written statements concerning all that they knew regarding the burning. Similar promises were offered by judges Metcalf Bowler and James Helme, Hopkins' associates on the Superior Court.

When they reconvened on Friday, the commissioners examined one witness briefly and then chose to defer further examinations until hearing from Admiral Montagu. Captain Symonds brought them a letter from the

³⁴ In part, Bowler wrote that because he was ". . . impressed with a regard for the dignity of the Crown, and the welfare of the colony, I now tender my assistance, whenever it shall be necessary. ..." He also agreed to apprehend people who had been indicted by the commission. Metcalf Bowler to the Commissioners, 11 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, p. 31, University microfilms, American Culture Series, University of Michigan. Bartlett, *Records*, VII, 132.

Bowler later became a British spy during the American Revolution. Under the pseudonyms of "Rusticus" and "S.H." he wrote several letters to Sir Henry Clinton, one of three major generals sent to America at the commencement of hostilities. Bowler came to America from England in 1743 where he had received his early education. While in Rhode Island he became a successful merchant, politician and judge. He represented the town of Portsmouth in the General Assembly for several years. He was Speaker of the House for nineteen years, in addition to being a judge of the superior court, and successor to Chief Justice Stephen Hopkins when the latter died. Jane Clark, "Metcalf Bowler as a British Spy," *Rhode Island Historical Society Collections*. XXIII. No. 4 (October, 1930), 102-03. N. P. Bowler, compiler, *Bowler Genealogy: Record of the Descendants of Charles Bowler England, 1740, American who settled in Newport Rhode Island* (Cleveland: The Forman-Bassett-Hatch Co., 1905), pp., 11-12. For reference to James Helme see Dexter, *Stiles Diary*, 20 January, 1773, I, 338.

³⁵ Proceedings of the Commissioners, 8 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, p. 26, University microfilms, American Culture Series, University of Michigan.

admiral on Saturday. Montagu revealed his displeasure at having to leave Boston, and added that he was coming at great inconvenience to himself and at considerable disruption to naval matters at Boston and Halifax.³⁶

He took issue with the assertion that his presence alone was required at Newport. As he interpreted Lord Dartmouth's letter, either he could attend or "' . . . such officer as he shall appoint. . . .'"³⁷ He complained that in addition to his naval duties his trip would require that an appropriate fleet of ships accompany him as directed by the Lords of the Admiralty.³⁸ But Boston weather prevented their sailing at this time of the year. Ezra Stiles ascribed different motivations to the Admiral's unwillingness to travel:

. . . the Admiral felt a Reluctance at being present; probably for 2 Reasons, the slenderness of evidence he had to produce in so momentous a Cause and some Notice that he had brought a Commission over his own head. Be the reasons as they might, he was greatly adverse to coming, and with the Commission sent a dubious Notice that he might come by Wednesday, If *Business permitted*. I think there were three Messages to get him here; the last however whether 2d or 3d, I knew would fetch him, for it went with an Authority which the Admiral dared not to withstand--had he not come the Judges would have returned without &c. and cast the Obstruction at his Door: besides they had power at least to call all the Crown Officers before them.³⁹

³⁶ John Montagu to the Commissioners, 8 January, 1773, Boston, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, p. 26. University microfilms, American Culture Series, University of Michigan.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 346.

On Monday, January 11, Montagu left Boston by coach. His appraisal of the condition of the rivers was correct; water travel was impossible.⁴⁰ He traveled to Newport via Taunton, Massachusetts (It was rumored that he feared having to pass through Providence, and therefore chose a more circuitous route). Near Swansea, Massachusetts, he boarded one of the King's vessels to complete the remainder of the trip by water, although his coach proceeded to Newport without him.⁴¹

He arrived in town Wednesday afternoon, January 13, planning to lodge with the Dudleys at Middletown, while spending his working hours aboard the *Lizard*.⁴² Collector Dudley came for him on Thursday. Six of his Majesty's vessels fired their guns in salute as the two men came on shore. To the Admiral's disappointment, Fort George (the local garrison) did not fly its flag nor did the gunner discharge any guns in the Admiral's honor. He was also disgruntled when the townspeople ignored him as he passed through Newport's streets.⁴³

Montagu smarted under the citizenry's insults. But it was Governor

⁴⁰ John Montagu to Phillip Stephens, Boston, 1 June, 1773, Public Record Office, Admiral's Dispatches, 1:484, Library of Congress transcript.

⁴¹ Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 334, 348. *Newport Mercury*, 18 January, 1773.

⁴² All of Montagu's correspondence was dated aboard the *Lizard*.

⁴³ Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 348, and entry in diary, 13 January, 1773, pp. 334-335.

Wanton's snubbing that was particularly offensive to him. Montagu had sent Captain Inglis to the Governor's residence to inquire why the local gunner had not saluted in an appropriate manner. The Governor, according to the *Newport Mercury*, sent the Admiral "a suitable answer."⁴⁴ In this written apology Wanton quoted a Rhode Island law stating that the local fort's guns were to be fired only on the King's and Queen's birthdays, Restoration day and election day.⁴⁵ Apparently not satisfied with this response, Montagu took the matter up with his superiors in England.⁴⁶ When Lord Dartmouth informed Wanton that a ship with ". . . an Admiral's Flag or broad Pennant hoisted . . ." ⁴⁷ was to be saluted, the Governor wrote the Secretary precisely what he had told Montagu, while promising to hail the ships of war "... in such Manner as is usual in all other Parts of His Majesty's Dominions in America."⁴⁸

⁴⁴ *Newport Mercury*, 25 January, 1773.

⁴⁵ Joseph Wanton to the Earl of Dartmouth, Rhode Island, 1 July, 1773, Colonial Office, 5:1285, Edwards, Gaspee Papers, Rhode Island Historical Society. Dexter, *Stiles Diary*, I, 336.

⁴⁶ John Montagu to Philip Stephens, Rhode Island Harbour, 19 January, 1773, Colonial Office, 5:119, folio 29b, Edwards, Gaspee Papers, Rhode Island Historical Society.

⁴⁷ The Earl of Dartmouth to the Lords of the Admiralty, Whitehall, 6 March, 1773, Colonial Office, 5:119, folio 33, Edwards, Gaspee Papers, Rhode Island Historical Society.

⁴⁸ Joseph Wanton to the Earl of Dartmouth, Rhode Island, 1 July, 1773, Colonial Office, 5:1285, folio, 393-96. Edwards, Gaspee Papers, Rhode Island Historical Society.

Montagu's penchant for protocol created problems in his dealings with the commissioners as well.⁴⁹ He was no more eager to attend them at the Colony House than he had been to leave Boston. Shortly after his arrival, he wrote them a letter which displayed his annoyance:

At your request, although at a very unseasonable time of the year, and not in the manner I am directed by my instructions from my Lords Commissioners of the Admiralty, I am come to this place, and have hoisted my flag on board the Lizzard.⁵⁰

He rebuked the commissioners for failing to accept Captain Keeler's assistance in lieu of his own. Nonetheless he extended his services to them now that he had arrived in the colony.⁵¹ In their reply the commissioners attempted to explain their interpretation of the clause in question:

We have no doubt but Capt Keeler would have punctually obeyed your orders. The difficulty did not arise on yt head, but from a conviction of the irregularity of departing from our instructions.

We shall be much obliged to you, when convenient if you would attend us on board having some questions to ask you relative to the information Lieut Duddingston gave you concerning the burning & destroying the Gaspee.⁵²

While this answer was being transmitted by their secretary, the commissioners received another dispatch from the Admiral at 11:30 a.m.⁵³

⁴⁹ Ezra Stiles to Rev. Elihu Spencer, in Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I. 348.

⁵⁰ John Montagu to His Majesty's Commissioners at Newport, Newport, 14 January, 1773, Staples, *Documentary History*, p. 27, University microfilms, American Culture Series, University of Michigan.

⁵¹ *Ibid.*

⁵² Commissioners to the Honorable Admiral Montagu, Council Chamber, Newport, 16 January, 1773, Staples, *Documentary History*, p. 28. University microfilms, American Culture Series, University of Michigan.

⁵³ Proceeding of the Commissioners, 16 January, 1773, Gaspee Commission Papers, Rhode Island State Archives, Staples, *Documentary History*, p. 49, University microfilm, American Culture Series, University of Michigan.

Clearly he did not wish to meet with them, at least not on their own terms. He notified them of his desire to return to Boston on Wednesday, the 20th, because ". . . the Business of the Naval Department is totally at a Stand, and cannot be carried on without I had my ships here. . . ." ⁵⁴ What irritated the commissioners most was Montagu's determined refusal to appear before them at the Colony House. Their answer to him indicated the tense feelings which had escalated to major heights:

Sir

After repeatedly informing you of our instruction & also in our last of a certain paragraph in our commission, & of our sense of the same, we submit the construction of your orders from the Lds. Commrs. of the Admty entirely to you. ⁵⁵

Although they indicated their desire to receive any information in his possession, they abandoned their efforts to summon him, and at this point Montagu's recalcitrance finally yielded. ⁵⁶ He agreed to meet with them at the council chamber on Monday, January 18. ⁵⁷ One of the topics of discussion at

⁵⁴ John Montagu to the Commissioners, Lizard, 16 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, p. 27, University microfilms, American Culture Series, University of Michigan.

⁵⁵ Commissioners to the Honorable Admiral Montagu, Council Chamber, Newport, 16 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, p. 28, University microfilms, American Culture Series, University of Michigan.

⁵⁶ *Ibid.*

⁵⁷ Proceedings of the Commission, 18 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, p. 50, University microfilms, American Culture Series, University of Michigan. Actually this would not be their first meeting. Montagu had met with them unofficially and informally over dinner after his arrival on January 13. Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 348-49.

this interview was whether Captain Dudingston's presence was necessary.⁵⁸ In a previous letter to Montagu, the lieutenant had stated that he possessed information concerning the identity of the attackers, and this information was now made available to the commissioners by the Admiral.

On the basis of this important development which the commissioners thought ". . . would be very material in our present inquiry . . .", they entertained the idea of adjourning to a later date, with the intention of bringing Dudingston before them for questioning. Admiral Montagu's wish to return to Boston was another factor which made adjournment desirable. The weather had also taken its toll. As the result of a forbidding snow storm the commissioners themselves were prevented from meeting on one occasion. They were also apprehensive that continued severe weather would preclude the examination of additional witnesses. Therefore they notified the Admiral of their desire to adjourn for these reasons, until May 26, 1773, although the date was not firmly established.⁵⁹

⁵⁸ Three days before, Montagu had asked the commissioners if they would be requesting Dudingston's presence. John Montagu to the Commissioners, 16 January, 1773, Gaspee Commission Papers, Rhode Island State Archives, Staples, *Documentary History*, p. 27, University microfilms, American Culture Series, University of Michigan.

⁵⁹ Commissioners to John Montagu, Newport, 19 January, 1773, Gaspee Commission Papers, Rhode Island State Archives, Staples, *Documentary History*, p. 28.

Before leaving Newport, Admiral Montagu wrote to Philip Stephens, the secretary to the Lords of the Admiralty. Montagu wanted to familiarize his superiors with the commissioners' progress, and with their decision to adjourn until May. He related all of the incivilities which he had suffered while at Newport, from the confrontation with the Governor to the insubordination of the fort gunner. He told Stephens, "I am informed the King's Proclamation was not suffered to remain above two hours after it was put up but taken down and trodden under foot in the most contemptuous manner."⁶⁰

After providing Stephens with some details concerning witnesses who had appeared at the Colony House, Montagu explained why he was designating Captain Keeler his substitute at Rhode Island--naval matters necessitated his return to Boston.⁶¹ He made his departure on January 20, As he traveled by coach through Rhode Island he came upon two farmers on the road, one of whom refused to let him pass by. The *Providence Gazette* reported that

... when the Admiral thought proper not to contest the Matter further, [he] *prudently* lowered his Cane, gave way to the Cart, and pursued his Journey. He was very particular in his Enquiries at the next Inn, after the Farmer's Name, perhaps with Design, agreeable to the Modern Mode; to indict him for Treason.⁶²

⁶⁰ John Montagu to Philip Stephens, Rhode Island Harbour, 19 January, 1773, Colonial Office, 5:119, folio 2 9b, Edwards, Gaspee Papers, Rhode Island Historical Society.

⁶¹ *Ibid.*

⁶² *Providence Gazette*, 23 January, 1773. *Newport Mercury*, 1 February, 1773.

Throughout their sparring with the Admiral, the commissioners had been idle inquisitors. They had examined only ten people during the sixteen days of their session. As Governor of Rhode Island, Joseph Wanton was one of three who testified on behalf of the colony. In attempting to explain the recourse to violence he dwelled upon the question of Dudingston's credentials as a customs officer for Rhode Island. When Wanton had confronted the lieutenant with this query, Dudingston had answered that his authority came from the Lords of the Admiralty and that he had not had authorization from the commissioners of customs at Boston. As proof he had forwarded to the Governor a directive from the Lords of the Admiralty authorizing him to command the *Gaspee*; their letter to the commissioners of customs at Boston requesting a customs deputation for Dudingston, and finally instructions that the lieutenant place himself under the command of his superior, Admiral Montagu.⁶³

Wanton also discussed Dudingston's behavior as a customs officer. On March 20 several Providence merchants had petitioned Governor Wanton to redress their grievances relating to Dudingston's disruptions upon their trade. Part of their protest had erupted when Dudingston hauled a vessel to Boston for condemnation in circumvention of Rhode Island's vice-admiralty

⁶³ Deposition of Governor Joseph Wanton, 21 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, pp. 37-39, University microfilms, American Culture Series, University of Michigan. Bartlett, *Records*, VII, 160-62. Bartlett and Staples both give an inaccurate date for the deposition, January 25 instead of January 21.

court. Improprieties which *Gaspee* crew members committed within the colony were also responsible for the merchant outcry. *Gaspee* people had stolen a quantity of timber from a local farmer. The Governor advised the farmer to demand reparation from Dudingston which the lieutenant subsequently paid. By calling to mind the former controversy over Dudingston's credentials and his behavior as a customs officer, Governor Wanton had laid the blame for the resort to violence at the feet of the navy officer.

Darius Sessions was the second colonial official to offer testimony in the cause of the colony, and its civil magistrates. Sessions claimed no foreknowledge of the *Gaspee's* fate despite the fact that he lived in Providence where most of the participants in the attack had assembled beforehand. He testified that he had not been aware of "an armed vessel in the river."⁶⁴ A beating drum was the only activity he had noticed. About a dozen boys, some teenagers and some younger, had marched up the street past his house and had returned a little later. Upon rising the following morning he had been surprised to learn of the schooner's destruction.

He testified that his immediate decision that morning was to ride to Pawtuxet where he found Dudingston seriously wounded as reported. He immediately offered his assistance. Although the lieutenant's only request was that his crew be delivered to Newport or Boston, Sessions had made provision

⁶⁴ Deposition of Darius Sessions, 9 January, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, pp. 29-30, University microfilm. American Culture Series, University of Michigan*

to collect the *Gaspee's* existing stores. Dudingston would not submit to examination himself, but he did not object to Sessions' interrogating the crew. Their depositions had been forwarded to Governor Wanton at Newport. Shortly thereafter Sessions had a conference with the Chief Justice who advised him that ". . . measures ought to be pursued for discovering and bringing to justice the perpetrators." ⁶⁵ Upon that advice Governor Wanton had issued a proclamation with a reward for anyone who could offer information leading to arrests. But Sessions observed that no information was ever received as a result of the proclamation. ⁶⁶

James Brenton, secretary to the commissioners, was the third deponent to defend the actions of the colony's officials. Brenton recalled an incident in which Governor Wanton had endeavored to obtain information concerning the participants of the affair. On July 17, 1772, Wanton had asked Brenton (in his capacity as a lawyer) to accompany Deputy Sheriff Robert Lillbridge who was to deliver a warrant from the Superior Court to Captain John Linzee of the *Beaver*, ordering him to release Aaron Briggs to the civil authorities for questioning. According to the warrant Linzee's ". . . withholding a man charged with a Capital Crime from the civil power ..." ⁶⁷

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Deposition of James Brenton, 8 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, pp. 28-29, University microfilms, American Culture Series, University of Michigan.

violated Rhode Island law.

About 1:00 p.m. that day the deputy sheriff and Mr. Brenton approached the *Beaver* to deliver the warrant. Because Captain Linzee was not on board, a sentinel would not permit them to deliver their warrant. Instead they were directed to the farm of Jahleel Brenton, where Linzee was visiting the wounded Dudington. Fearful that the warrant was for his own arrest, Linzee would not agree to speak with Lillbridge, although he did grant an interview with Brenton who explained the legal points in the warrant to him. Linzee refused to release Aaron Briggs without express consent of Admiral Montagu, whose power was ". . . the only power he knew in America. . . ." ⁶⁸ Governor Wanton's request that Briggs be released to the civil authorities carried no weight for Linzee who referred to Rhode Island's chief magistrate as a "damned rascal." ⁶⁹

On the basis of the testimony of Wanton, Sessions and Brenton, it appeared that merchant ire in Rhode Island was justified. The three Rhode Islanders had also presented evidence which substantially invalidated the ministry's charge that Rhode Island's civil officials had not taken firm steps to apprehend suspects. Attempts to obtain information concerning the identity of the culprits were made by the Lieutenant Governor and the Governor. Several depositions taken at the time, a proclamation, and a warrant to obtain

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

custody of Aaron Briggs, all pointed to the apparent bona fide intentions of the colony's officials.

So much for the colony. Was there no one to defend William Dudingston? Although Admiral Montagu did testify before the commissioners, apparently no written statement had been made. Perhaps Montagu found the idea of a deposition beneath his dignity. Perhaps he defended the name and reputation of Dudingston in his off-the-record comments to the commissioners. Perhaps he praised his officer for attempting to compel Rhode Island merchants to strictly adhere to the trade laws, while chiding the Governor for failing to take more vigorous steps to apprehend suspects. Montagu was not convinced that the Governor's proclamation was exemplary of Wanton's desire to bring the guilty persons to light.

Aside from any unrecorded remarks by Montagu, no other statement was offered in evidence to balance the interpretation of Wanton, Sessions and Brenton. Dudingston was not available to make his own defense. Charles Dudley might have testified on behalf of the officer, but curiously did not. None of Dudingston's colleagues, not even John Linzee of the *Beaver*,² appeared before the commissioners or presented written statements to them.

The remainder of the depositions, which the commissioners obtained, related exclusively to alleged participants in the incident. Testimony from Rhode Island residents and former *Gaspee* crew members was offered in evidence. Stephen Gulley, a Smithfield farmer, claimed to know who the attackers were. He maintained that his life had been threatened because he had

turned informer. Regardless of his reasons, his appearance before the commissioners was a courageous effort. When he arrived in town on January 6, he sought refuge aboard the *Lizard*. While he was waiting to make his examination, he had decided to enlist in the British navy.⁷⁰ The crown could not have found a friendlier Rhode Islander to testify on its behalf!

Gulley's knowledge was anything but "first hand." He had received his information from a Captain William Thayer of Mendon, Massachusetts, who had gained his intelligence from Saul Ramsdale, a Providence shoemaker who had recently moved from Mendon. Gulley had been Ramsdale's friend for several years and had communicated with the shoemaker to obtain more information.

According to Gulley, Saul Ramsdale was present when the *Gaspee* attackers began their preparations in Providence on the evening of June 9. Ramsdale professed to know the "heads of the gang." He identified them as Joseph and John Brown, and a Potter whose first name Gulley had forgotten.

⁷⁰ Deposition of Stephen Gulley, 12 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, pp. 31-32, University microfilms, American Culture Series, University of Michigan. Although he identified himself as a husbandman, his summons referred to him as a mariner, probably because of his recent enlistment in the navy. Dexter, *Stiles Diary*, 14 January, 1773, I, 333.

⁷¹ Mendon is seven miles from the northern border of Rhode Island.

⁷² Deposition of Stephen Gulley, 12 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, pp. 31-32, University microfilms, American Culture Series, University of Michigan.

Although Ramsdale did not choose to be an accomplice to the violence, he told Gulley that upwards of 300 people had chosen to participate.⁷³

Gulley mentioned that a threat to his safety was the primary inducement for his seeking sanctuary aboard the *Lizard*. He had gone to a tavern on Monday, the 5th,⁷⁴ ordered a drink and supper, and settled himself by the fire to chat with the tavern keeper.⁷⁵ Before long a man joined them and asked Gulley where he was going. When he answered that he was on his way to Newport the stranger warned him that he would never get there because twenty men were waiting in the road, one of whom was armed with brass pistols. They were determined to take him back to Providence dead or alive. After the stranger left the room the tavern keeper advised Gulley to leave the building immediately and escorted him about a quarter of a mile from the tavern to a road which led to Newport. There he immediately boarded the *Lizard*.⁷⁶ As a result of Gulley's testimony William Thayer, Saul Ramsdale

⁷³ Gulley mentioned in his testimony that after hearing Ramsdale's story, he took his newly acquired information to Boston. Stiles said that Gulley hoped to retell the story to Robert Auchmuty, but the vice-admiralty judge, upon hearing Gulley's account, dismissed it as useless and called Gulley ". . . a Worthless Fellow." Ezra Stiles to Rev. Elihu Spencer, 16 February, 1773, Dexter, *Stiles Diary*, I, 348.

⁷⁴ Gulley really meant Monday, January 4.

⁷⁵ Joseph Borden was the name of the Inn-keeper; Portsmouth is ten miles from the Colony House.

⁷⁶ Deposition of Stephen Gulley, 12 January, 1773, Gaspee Commission Papers, Rhode Island State Archives, Staples, *Documentary History*, pp. 31-32, University microfilms, American Culture Series, University of Michigan.

and tavern keeper Joseph Borden were all summoned to appear before the commissioners.

Because Borden lived in Portsmouth, only ten miles from Newport, he came to town immediately. He was one of a handful of Rhode Islanders who had agreed to appear before the commission. But he had not come to accuse John and Joseph Brown and Potter. Disparaging the credibility of Stephen Gulley was his purpose;⁷⁷ Gulley had come to Borden's Portsmouth inn with a companion, Thomas Aylesbury. Both men ". . . appeared to be in liquor."⁷⁸ While Gulley was waiting for his supper, he and Aylesbury

⁷⁷ Ezra Stiles challenged the credibility of Gulley as an informer. He said of him:

"Yesterday a Man of Smithfield, who went on board the Man o' War last week pretending himself an Evidence, was brought ashore and examined and so he was dismissed; but immediately he enlisted on board Ship. It seems this man (an only Son) proved stubborn, rebellious, and treated his parents in such a manner, especially in his Cups, that his Father swore the peace upon him &c.-and his Father entailed his Estate, and died perhaps 2 or 3 years since."

The suggestion was that Gulley had only come before the commissioners to resuscitate his lost fortune. Stiles continued: "Before this he proved such a spendthrift and Madman, that the Court put him under Guardians. Afterwards he upon promises procured the Guardianship to be taken off. Which done, he this last year brought forward a process at Law for docqung his Estate; which came on at perhaps the last Court, when the Town Council of Smithfield appeared to prevent it. ... This exasperated him against some in his own Town and some in the Town of Providence, against whom he swore revenge. Accordingly the week before the Judges came, he went down to Boston and informed Mr. Auchmuty, who finding him to be a drunken fellow, dismissed him. He came then to Newport, raging all along the Towns from Boston hither that he would ruin Providence." Dexter, *Stiles Diary*, 14 January, 1773, I, 335.

⁷⁸ Deposition of Joseph Borden, 13 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, p. 32, University microfilms, American Culture Series, University of Michigan. In the summons Borden was referred to as a yeoman; in his examination he identified himself as a landholder; the journal lists him as an innholder.

went outside to hear the King's proclamation which was being read by someone. Gulley was extremely interested in the proclamation and "... said it was a fine reward, and he intended to have it. ..." ⁷⁹

Borden testified that it was Gulley's friend Aylesbury, not a stranger, who forewarned him that "... a number of Indians, with brass pistols, in the road . . ." planned to "... take care of him." ⁸⁰ But Borden doubted that there were Indians out there. He concluded that Aylesbury had only intended to frighten Gulley. When Gulley asked Borden what he should do, the tavern keeper advised him to take an alternate route to Newport and ushered him out the door, his reason being that he did not want Gulley and Aylesbury to engage in fisticuffs in his inn since both were drunk. ⁸¹

The others mentioned in Gulley's deposition, William Thayer and Saul Ramsdale, never got to Newport. Instead both had conferred with Sessions who had since returned to Providence. The Deputy Governor later told Governor Wanton that Thayer had come from Mendon to Providence, but rheumatism and old age prevented his going the rest of the way to Newport. Sessions offered to hear his deposition. At his Mendon inn, some twenty-two miles from Providence, Thayer had overheard references to the *Gaspee* attack.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Apparently, Borden did not want to appear as one who was abetting an informer, but rather as one who was concerned about the property in his inn.

Some of his customers referred to the attackers as "... Potter and Brown, or Browns, but [Thayer] did not know them, nor where they lived."⁸²

Deputy Governor Sessions submitted this deposition to Wanton with the suggestion that he dispose of it as he saw fit.⁸³ The commissioners' journal of their proceedings was not explicit as to whether Wanton shared the deposition with his colleagues. Ramsdale was instructed to appear in Newport personally. Unlike Thayer he was a young man in good health and the trip would not have inconvenienced him in any way.⁸⁴ Significantly he never testified before the commissioners, even though a statement by him would have been potentially of great use to the commissioners.

The testimony of Aaron Briggs was also pivotal to the hearings. Briggs was eighteen years old, an indentured servant and farm laborer on the Prudence Island property of Captain Samuel Tompkins. Chief Justice Smythe visited Montagu on the evening of January 13 with a summons for

⁸² Deposition of William Thayer, 15 January, 1773. Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, pp. 39-40, University microfilms, American Culture Series, University of Michigan. Bartlett, *Records*, VII, 147.

⁸³ Darius Sessions to Joseph Wanton, Providence, 15 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, pp. 39-40, University microfilms, American Culture Series, University of Michigan. Journal of the Proceedings, 11-12 January, 1773, Staples, *Documentary History*, pp. 49-50.

⁸⁴ Although Ramsdale's testimony would appear to be vital to the Commission of Inquiry, there is no extant deposition bearing his name. Nor is there any notice in the Proceedings of his appearance at Newport.

Briggs who claimed to be one of the participants in the attack. Admiral Montagu considered him the crown's star witness. If his credibility was established the inquiry would probably yield adequate evidence resulting in indictments. If he were discredited, which was undoubtedly Governor Wanton's intention, the commission of inquiry would inevitably become moribund.

Briggs stated that he had set out in a small fishing boat on the night preceding the armed assault. He planned to take Samuel Falkoner, who worked on the farm, back to his Bristol residence.⁸⁵ On the east side of Prudence Island, Briggs came upon a boat with eleven men in it. He said that Falkoner identified one of the men as a Mr. Potter who owned the rope walk in Bristol. Potter had commanded Briggs to stop rowing, and follow him on an hour's mission ". . . to fetch something down. . . ."⁸⁶ After several protestations Brings was prodded into accompanying the others. They attached the painter of his boat to theirs and towed him up the Bay about a half mile from the *Gaspee* schooner, at about 10:00 p.m. The man called Potter had ordered him into the boat with the others and explained that their plan was to burn the *Gaspee*.

Although they were expecting an additional sixteen or seventeen boats

⁸⁵ Deposition of Aaron Brings, 14 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, pp. 32-34, University microfilm, American Culture Series, University of Michigan. Bartlett, *Records*, VII, pp. 136-39. The deposition is confusing on some points. Brings is not clear as to whether he had Falkoner in the boat with him when the men approached, or whether he was alone.

⁸⁶ *Ibid.*

from Providence, only eight had joined them by 11:00 p.m. Two of the Providence people were named Brown. They conversed with Potter about the best method for boarding the schooner. Although Briggs testified that he did not know the Browns or their Christian names, he swore that John Brown got into Potter's boat, and that John Brown fired the shot which wounded Dudingston. Briggs was disembarked on shore after the schooner was set aflame, and Potter gave him a small sum of money for his trouble. Briggs had mentioned one other name, a Dr. Weeks of Warwick whom he identified as the individual who dressed Dudingston's wounds. In an earlier deposition Briggs had included a man named Richmond but he failed to mention him in his statement in January.

Like Stephen Gulley, Aaron Briggs had implicated John and Joseph Brown, and Potter in the *Gaspee* affair. His testimony might yet be a tinderbox for the royal commission, as John and Joseph Brown and Barzillai Richmond apparently realized. At their request, Deputy Governor Sessions asked Daniel Vaughan to appear before him and give a written account of what information he possessed concerning Aaron Briggs. The Browns and Richmond were hopeful that Vaughan might be able to challenge the verity of the black servant's deposition.⁸⁷

Vaughan gave his testimony before Sessions in Providence on January 16.

⁸⁷ Richmond and John and Joseph Brown were three of the five names which Briggs mentioned in an examination taken in June, 1772. The others were Dr. Weeks of Warwick, and Simeon Potter of Bristol. Deposition of Aaron Briggs, Bartlett, *Records*. VII, pp. 93-94.

He had been employed by the colony to remove iron from the remains of the *Gaspee*. Vaughan and his companions sighted a small craft next to the *Beaver* as their sloop followed behind the royal vessel. Obviously a local resident had gone on board. Vaughan spotted Aaron Briggs in irons, and said to him, ". . . so you are one of the rogues that have been burning the Gaspee . . ." ⁸⁸ Briggs replied ". . . he never saw her, nor knew anything about her. . . ." Vaughan said that it was not until Captain Linzee whipped Briggs that the black man professed to know of the alleged culpability of Simeon Potter, John Brown and others. ⁸⁹ Sessions transmitted Vaughan's statement to Governor Wanton:

I choose Mr. Vaughan should give his deposition before the commissioners, If he arrived in season for that purpose; but if he doth not, and you think proper to make use of what I now send, you have liberty to improve it in any way you think it may promote truth and justice. ⁹⁰

It is not clear whether the deposition by Vaughan was made available to the other members of the commission by the Governor. It was not recorded in the journal of the proceedings, the procedure which the commissioners had been following during their session. ⁹¹

⁸⁸ Daniel Vaughan deposition, before" Darius Sessions, Providence, 16 January, 1773, Gaspee Commission Papers, Rhode Island State Archives, Staples, *Documentary History*, p. 40. University microfilms, American Culture Series, University of Michigan. Bartlett, *Records*, VII, 148.

⁸⁹ *Ibid.* Briggs had used only the surname Potter; however Vaughan used the Christian and surname, Simeon Potter.

⁹⁰ Darius Sessions to Governor Wanton, Providence, 18 January, 1773, Staples, *Documentary History*, pp. 40-41, University microfilms, American Culture Series, University of Michigan. Bartlett, *Records*, VII, 149.

⁹¹ Journal of the Proceedings. 11-12 January. 1773, Staples, *Documentary History*, pp. 49-50, University microfilms, American Culture Series, University of Michigan.

With grave concern Sessions wrote the Governor again. He had just received word from Newport:

... that a report prevailed that his [Briggs'] evidence carried many marks of truth with it, and as it is impossible (as I think) that there can be a word of truth in it, and as I look upon it my duty to protect the innocent, as well as to punish the guilty, I thought it my duty to let your honor know of some circumstances that may throw some light on this affair.⁹²

The Deputy Governor pointed out that Briggs had testified that he wore a red and white handkerchief on his head the night of the attack. Sessions surmised that the servant had been coached carefully by someone and that he was told to mention this to facilitate his identification by *Gaspee* people, whose testimony would thus appear all the more creditable. The Deputy Governor also recalled that when he had examined several *Gaspee* crew members in June, 1772, all had testified that some of the attackers were either black or had blackened faces.⁹³ As there was no moon, Sessions wondered how was it possible for him to identify the people, let alone whether they were black men, or white men with blackened faces.⁹³

As the result of the testimony of Gulley, Briggs and William Thayer, the names of Brown, Potter and Weeks had been mentioned in connection with the *Gaspee* attack. Joseph Borden had come forth to discredit Gulley; Daniel

⁹² Darius Sessions to Governor Wanton, Providence, 18 January, 1773 [this is a second letter, written on the same day]. Staples, *Documentary History*, p. 41, Bartlett, *Records*, VII, 150.

⁹³ Sessions examined several *Gaspee* crew members, among them Bartholomew Cheever, John Johnson, William Caple, Joseph Bowman, Patrick Whaler, Patrick Earle, and Patrick Reynolds.

Vaughan had appeared to discredit Briggs; no one had discredited the deposition of Thayer, but perhaps there was no need to. Had Governor Wanton shared the examination of the Mendon innkeeper with the other commissioners? He had sufficient reason not to.

The *Gaspee* crewmembers had yet to testify. When they did it was the seaman, Patrick Earle, who sought to reestablish the credibility of the Briggs testimony. Earle maintained that while he and his fellow crew members were being rowed to shore after the *Gaspee* was set aflame, he had managed to free his hands and take up an oar, hoping that by rowing he might warm himself. A black man whom he identified as Aaron Briggs gave him an oar. Earle claimed that he did not encounter Briggs again until the latter was detained aboard the *Beaver*. Earle swore before a justice of the peace that Briggs was the very same black man who had rowed him, Dudingston and others to shore in the early morning hours of June 10.⁹⁴

Regarding his detention aboard the *Beaver*, Briggs' story differed from that of Earle. After the burning of the vessel Briggs left Prudence Island in a boat ". . . with an intention not to return again to his Master's."⁹⁵ He boarded the *Beaver* and was immediately placed in irons by Captain Linzee, who suspected him as a runaway. Subsequent identification by Paddy Allis (Patrick Earle)

⁹⁴ The commissioners were also in receipt of a deposition from Patrick Earle taken by a justice of the peace on July 16, 1772. Admiral Montagu had presented it to them.

⁹⁵ Deposition of Aaron Briggs, 14 January, 1773, Gaspee Commission Papers, Rhode Inland State Archives.

named Briggs as the black man who had rowed Earle to shore the night the schooner was burned. According to Briggs, Earle swore upon the Bible before Captain Linzee that Briggs had indeed rowed him to shore that night. Linzee ordered Briggs to name the leaders of the attack or suffer hanging at the yardarm.⁹⁶ Prodded into confessing, he had told the foregoing story to the captain.⁹⁷

Although Earle had not mentioned anyone named Brown in his deposition, he did make reference specifically to the surname Potter. When the crew of the *Gaspee* was being evacuated from the vessel, Earle heard someone call out "Potter it is . . . best . . . to set the men on shore, for it was not their fault, but the officers . . ." He described Potter as a sharp-featured

⁹⁶ *Ibid.*

⁹⁷ The intricate and detailed testimony of Aaron Briggs suggests strongly that his account was largely creditable, despite the small inconsistencies in his deposition. For instance he said the vessel was attacked about 11:00 p.m.; it was closer to 1:00 p.m. He also said that he did not know the Christian names of the Browns, yet he identified John Brown as the ring leader. On these grounds only (for the rest of his account is quite plausible) the commissioners dismissed his testimony as worthless.

The confused presentation of the witness may have been due to the fact that he was coached and did not memorize his facts correctly; that he was frightened and became confused as a result; that because he was inarticulate, he could not express himself as eloquently as the commissioners would have liked.

The fact remains, however, that one cannot read his testimony without marveling at how well he performed, even if he were coached. The final report to the King would indicate that Briggs was not among the participants. There is strong evidence to support this, even an omission by Briggs himself. But his deposition remains creditable, nonetheless.

tall, thin man whose hair was tied behind his head.⁹⁸

The testimony of another *Gaspee* sailor, Peter May, added a new name to the vague list of attackers. May had overheard one of the men ask Dudingston if he intended to make good for the rum which he had seized.⁹⁹ The sailor recalled that the man's name was Greene. He said that he had seen Greene on one other occasion when he was brought before Dudingston for interrogation.¹⁰⁰

The testimony of the ten deponents must have been a disappointment for all of the commissioners except Joseph Wanton. He praised the activity of the colony's civil magistrates in their efforts to uncover suspects in the *Gaspee* affair. Aside from a possible off-the-record statement by Montagu,

⁹⁸ Deposition of Patrick Earle, 16 January, 1773, Gaspee Commission Papers, Rhode Island State Archives, Staples, *Documentary History*, pp. 35-36, University microfilms, American Culture Series, University of Michigan. Bartlett, *Records*, VII, 141-42.

⁹⁹ Rufus Greene, Jr., master of the sloop *Fortune*, which Dudingston had seized In February, 1772, appeared before Justice of the Peace, Hopkins Cooke, to give a deposition on January 14, 1773. In it he recounted his experiences of February, 1772, when his vessel was seized and he himself was incarcerated.

However, there does not appear to be a summons issued by the commissioners for Greene. Likewise, this deposition does not appear in the proceedings of the Commission. It is possible that the deposition never reached their hands, that Governor Wanton received it and did not pass it on, or that all of the commissioners were familiar with it, and for some reason, did not wish to include it in their minutes. Deposition of Rufus Greene, Jr., 14 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, pp. 34-35. Bartlett, *Records*, VII, 145-46.

¹⁰⁰ Robert Masters' examination was deemed so trifling that no deposition was taken. Proceedings of the Commission, 19 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, p. 50, University microfilms, American Culture Series, University of Michigan.

no defense had been offered on behalf of William Dudingston.

What of the statements of the other six deponents? Four of them: those of Stephen Gulley, Aaron Briggs, Patrick Earle and Peter May contained some substance. Gulley and Briggs had mentioned the names of John and Joseph Brown and Potter. If Governor Wanton shared the deposition of Daniel Vaughan with his colleagues on the commission, they would have known that Simeon Potter was implicated in that attack. Although Peter May did not know the Christian name of the Greene whom he mentioned, minimal investigation would have yielded some favorable results for the crown. It was Rufus Greene, Jr., the master of the *Fortune*, who had been detained aboard the *Gaspee* in February, 1772. May claimed that he could identify Greene. But the commissioners made no effort to use their powers to summon John Brown, Joseph Brown, Potter or Rufus Greene, Jr.

Admiral Montagu was determined to assist the commissioners whether they desired his aid or not. He tried to augment the number of deponents by providing the commission with an additional six names which he had in his possession. Where he received the names is not clear, but he advised the commissioners to issue summonses for them.¹⁰¹ For one reason or another, none of the six persons ever reached Newport during January. Three were Providence

¹⁰¹ Montagu must have received his information from a Rhode Island informer. However, there is no evidence which would support a reasonable attempt at speculation. The informer was probably a Providence resident, as all of the names were those of men from Providence.

attorneys, Daniel Hitchcock, George Brown, and John Cole.¹⁰² The lawyers were representing clients at the court session in East Greenwich.

Upon receiving their summonses, the three attorneys were less than cooperative. Stephen Hopkins had advised them to issue depositions from East Greenwich, rather than disrupt the court proceedings by making a trip to Newport. But in a joint letter to the Chief Justice, they explained why they had decided to ignore the authority of the commission of Inquiry:

The least Notice . . . taken of their Summons, would be a partial Acknowledgement of their jurisdiction: To acquiesce in which, would entail an eternal Infamy on those, who ought to be acquainted with the Principles of the Constitution. A Power to Command by legal Sanction, is unknown in the British Laws: We do not therefore, fear the Consequences of paying no Regard to the Name of a Court. To the Civil Authority of this Colony, we are always ready, with the greatest Chearfulness, to answer in relation to the burning the Schooner Gaspee, who are only empowered, by legal Right, to enquire of the same, at present.¹⁰³

Because Hopkins considered their approach to the problem ill-advised, he and the Deputy Governor decided ". . . to try if we can prevail on them to Conduct this matter in a more agreeable way. ..." ¹⁰⁴

In separate letters the lawyers responded to the commissioners.

¹⁰² John Cole was a member of the General Assembly and one of the members of the committee appointed to seek the advice of Samuel Adams and John Dickinson.

¹⁰³ John Cole, George Brown and Daniel Hitchcock to Honb [*sic*] Stephen Hopkins, Esq., East Greenwich, 19 January, 1773, copy enclosed in Stephen Hopkins to Colonel Wanton, Providence, 20 January, 1773, American Manuscripts, John Carter Brown Library, Brown University.

¹⁰⁴ Stephen Hopkins to Colonel Wanton, Providence, 20 January, 1773, American Manuscripts, John Carter Brown Library, Brown University.

Daniel Hitchcock notified them that his engagements at Kent Court in East Greenwich made it impossible for him to attend. But he promised that ". . . every thing that I know, touching that Matter, I am ready to relate."¹⁰⁵ What he did communicate was insignificant. He stated that it was the practice among Rhode Island's attorneys to celebrate the conclusion of filing pleas. With two of his colleagues he had repaired to Sabin's Tavern in Providence. At 8:00 p.m. he saw a group of people outside the building; at 9:00 he heard a drum beat—someone told him it was simply a group of boys playing. He dismissed both incidents as unrelated.¹⁰⁶ George Brown's communication to the commissioners did not supplement Hitchcock's statement. John Cole's letter was unenlightening as well,¹⁰⁷ but Cole indicated a desire to cooperate. He said: "I am disposed to give your Hons all the information that has come to My Knowledge concerning the affair which is extremely small."¹⁰⁸

¹⁰⁵ Daniel Hitchcock to the Commissioners, East Greenwich, 20 January, 1773, Gaspee Commission Papers, Rhode Island State Archives, Staples, *Documentary History*, p. 37, University microfilms, American Culture Series, University of Michigan.

¹⁰⁶ This letter is not entered in the proceedings.

¹⁰⁷ John Cole to the Commissioners, East Greenwich, 20 January, 1773, and George Brown to the Commissioners, East Greenwich, 20 January, 1773, Gaspee Commission Papers, Rhode Island State Archives. Staples, *Documentary History*, pp. 36, 37, University microfilms, American Culture Series, University of Michigan. Bartlett, *Records*, VII, 158. Because the commissioners had adjourned before the letters arrived in Newport, they were not entered in the journal of the proceedings.

¹⁰⁸ John Cole to the Commissioners, East Greenwich, 20 January, 1773, Staples, *Documentary History*, pp. 36-37, University microfilms. American Culture Series, University of Michigan. Bartlett, *Records*, VII, 158.

The other three individuals whom Montagu had called to the attention of the commission of inquiry were no more helpful than the three Providence lawyers had been. John Andrews of the vice-admiralty court of Rhode Island could not attend. His daughter said that he was too infirm to make the journey from Providence to Newport. James Sabin, an innkeeper from Providence, was quite adamant in his refusal to appear before the commission. He was much annoyed at having to go to Newport and swore he would not come.¹⁰⁹ Ezra Stiles had also heard that Sabin "... returned a boisterous Answer . . ." to his summons.¹¹⁰

His written response to the commissioners arrived on January 22 just as they were adjourning. He said he could not attend them because of illness. Should his illness not prove reason enough for his being excused, Sabin added that he was an insolvent debtor who might be arrested by his creditors if he left his house!¹¹¹ But he did not refuse to cooperate with the commission. He was willing to leave his "sick bed" and risk arrest by his creditors in order to tell all that he knew to any justice of the peace, but refused to recognize the authority of a royal commissioner! Arthur Fenner, a clerk in the Supreme Court of Providence County, was the last named on

¹⁰⁹ Acct of Samuel Clarke, n.d., Gaspee Commission Papers, Rhode Island State Archives.

¹¹⁰ Dexter, *Stiles Diary*, 22 January, 1773, I, 338.

¹¹¹ James Sabin to the Commissioners, Providence, 19 January, 1773, Gaspee Commission Papers, Rhode Island State Archives, Bartlett, *Records*, VII, 154.

Montagu's list. He was seventy-four years old and in poor health. He too excused himself.¹¹² Old age and illness had worked its toll upon the designs of the royal commission of inquiry.

With inordinate consistency nearly all Rhode Islanders summoned to appear before the commission refused to attend or to offer evidence which might have implicated people in the attack upon the *Gaspee*. Those who did make statements came forth to exonerate rather than implicate local residents. Aside from Aaron Briggs, only one Rhode Islander Stephen Gulley, had made an unsolicited appearance before the commission. The threats upon his life perhaps explain why no one else appeared to offer evidence. Obviously many people were cognizant of facts relating to the attack. Only Stephen Gulley, however, sufficiently coveted the £1000 reward to risk his safety. Why the overwhelming devotion of Rhode Islanders to the *Gaspee* attackers? Loyalty may have been a partial explanation. Fear of bodily injury was certainly another.

While the commissioners had cited many reasons for adjournment, the hostility of Rhode Islanders and their formidable refusal to reveal the identity of any of the attackers left the five commissioners with nothing to do but adjourn with some embarrassment. The weather, Admiral Montagu's decision to return to Boston, and Captain Dudingston's absence were convenient pretexts of which the commissioner made full use.

¹¹² Stephen Hopkins to Colonel Wanton, Jr., Providence, 20 January, 1773, American Manuscripts, John Carter Brown Library, Brown University.

When Chief Justice Hopkins learned that the commissioners planned to adjourn, he wrote to Colonel Joseph Wanton, Jr., the Governor's son. Hopkins asked him to implore his father and the other commissioners to adjourn for an extended period of time, at least long enough to permit the colony to communicate with the ministry.¹¹³

... this will give the Crown Officers an opportunity to makg [*sic*] Good their many heavy charges Against this Colony: this will also give this Injurd Colony an Opportunity of Shewing the Error & Falsehood of many Malitious Charges made against it by Admiral Montagu & many other Crown Officers; and less than Six months Recess Cant possibly be sufficient for all or indeed any of these purposes.¹¹⁴

He believed a long recess would be an "... Agreeable rest, & useful pause, to the Commissioners themselves. ..." And thought Hopkins, the possibility of a hurried decision by the commissioners would be unlikely:

there known Character can never let it be thought, they would be hasty in Subverting Charter Rights: that they they [*sic*] would willingly & of Choice have any hand in Establishing unconstitutional Measures in America; that they would Subvert & Destroy Every personal Right of the Colonists, could they be Supposed to wish all or any of these things: but only two are in their power, to wit the lives of a few of their fellow Citizens; & the Rights & Libertys of all America; they cant be so Dead to all feeling, so Callous to eviry Social Sentiment as to wish much less to have a principal hand in riviting the fetters & Shackles of all the Inhabitants of this Devoted Continent. Let them rather remember that Fame, & the Truth telling page of History shall transmit their Names to Infamy to all Eternity, if they become tools of power not Established in Right.

This may be shown to any or all the Commissioners if there is need of it, or Otherwise as there may be Occasion.¹¹⁵

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

Another Rhode Island official, Attorney General Henry Marchant, considered the possible consequences for the commission. Marchant was steeped in facts and opinions, having dined with the commissioners only a few days before.¹¹⁶ When he shared his thoughts with a London correspondent, David Jennings, he cautioned him to keep to himself this "peculiar and Delicate Subject."¹¹⁷ In private he condemned the burning of the *Gaspee* which he considered an act of vandalism against public property. He viewed the assault upon Dudingston as equally reprehensible. Nor did he approve of the manner in which many of the colony's first citizens had been maligned on the basis of insufficient evidence.¹¹⁸

The statements of Aaron Briggs had been used to support those indictments. Marchant did not lend much credence to them. He said that Mr. and Mrs. Tompkins, to whom Brings was indentured, could testify to his having been at home the entire evening of June 9 and the morning of June 10. Marchant believed that Briggs had weakened his credibility in contending first that his story was true, and then professing that Captain Linzee had pressured him into divulging what he allegedly knew.

Marchant also commented upon the King's proclamation and commission. He was not opposed to proclamations as such (even the Governor had

¹¹⁶ Dexter, *Stiles Diary*, 20 January, 1773, I, 338.

¹¹⁷ Henry Merchant to David Jennings, Newport, 25 January, 1773, Henry Merchant Letter Book, Newport Historical Society.

¹¹⁸ *Ibid.*

issued one); the questionable propriety of offering such a large reward was what worried him most. Perhaps it would induce some mercenaries in Rhode Island to proffer hearsay or rumor as evidence, simply to collect the £1000.¹¹⁹ To Marchant the commission was much more alarming than the proclamation.¹²⁰

He found the entire policy of the ministry an indignity, especially the provision for overseas trials. His comments contained an implicit belief that such trials were considered essential by the ministry because of the absence of an impartial court system in Rhode Island, and the presence of less than conscientious civil officials. Indeed the honor of Rhode Island and of its officers had been tarnished.¹²¹ To compound this affront the crown had given the commissioners the option of drawing upon the military for their protection should their inquiry be threatened by civil disturbances. With a sense of pride Marchant proclaimed that

The Comm'rs have set for nineteen Days & to their great Surprise found not the least opposition or Tumult—but on the Contrary the greatest Peace and good order amongst the common & lower Class of men & they do say the greatest Marks of Politeness from every higher Rank of Men . . .¹²²

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² Governor Wanton's heading the commission may have served as some type of restraint on local people who would have preferred to protest violently against the convening of the commissioners.

Who then colored the thinking of the ministry? Who circulated these falsehoods concerning Rhode Island's officials? Marchant said that the colony had been misrepresented by Admiral Montagu. His weak assertions, thought Marchant, were postulated upon the testimony of a few witnesses who ". . . had little regard paid to Them . . ." by the commissioners.¹²³

Marchant was incredulous that such a commission could have materialized in the first place under the auspices of one of America's reputed friends, the Earl of Dartmouth. Yet it was executed under Dartmouth's tenure. While he doubted that the Secretary had given his approval to such a measure, Marchant asked Jennings to determine what the real facts were and to ascertain where the Secretary stood on this matter.

By the time Marchant had penned this letter to Jennings the commissioners had already adjourned. What course of action they would pursue in May was undoubtedly the question most in the minds of many people in Rhode Island and elsewhere. With a certain apprehension, Marchant wistfully noted, "The Comm'rs in short have broke up intending as it is said to meet again next May, to what Purpose Time can only discover."¹²⁴

¹²³ Henry Merchant to David Jennings, Newport, 25 January, 1773, Henry Marchant Letter Book, Newport Historical Society.

¹²⁴ *Ibid.*

CHAPTER IX

RECESS AND RECONVENING

By the beginning of February, Newport was very much back to normal. The only commissioner in residence was the Governor. Rhode Islanders' fears had not come to pass. For one thing, no persons had been indicted. The apparent futility of the investigation was attendant upon several factors. Besides the inclement weather, the intransigence of the three Providence attorneys and innkeeper, James Sabin was indicative of the difficulties the commissioners experienced in their attempt to secure deponents. But the restraint with which the citizens conducted themselves rendered the use of troops unnecessary. Rhode Islanders, by their actions, had effected the direction of the commission for the time being.

Although Rhode Islanders could derive some relief from what had not occurred, there remained the persistent fear of what might yet take place. Adjournment had left much business unfinished, and the inconclusiveness of the commissioners' endeavors was largely responsible for the ongoing interest in their activities. Rhode Islanders and other colonials evinced great concern over the possible implications of the Newport inquiry.

The legality or constitutionality of the commission was a much discussed topic. Providence attorneys John Cole, Daniel Hitchcock, and George

Brown had been very candid in their evaluation. They believed that the commissioners were not empowered by any sanction in British law to summon deponents before themselves. They had stated emphatically, that they did not recognize the jurisdiction of this royal court.¹ Stephen Hopkins, who found their declarations a bit too fervent, had convinced them of the need to temper their remarks. Rhode Island's attorney general, Henry Marchant, shared the Chief Justice's cautious attitude. He hesitated to offer his opinion upon the legality of the measure.²

The local newspapers reflected the public interest in this constitutional controversy. One observer queried whether Rhode Islanders should afford any legal recognition to the commissioners whose powers, he said, were a negation of the principles of republican government.³ From the southern colonies, Alexander Purdie's *Virginia Gazette* challenged the commission's constitutionality with little compunction. Purdie reprinted articles from selected newspapers in New England. One referred to the commission as a "... very extraordinary Stretch of Power ..." and the possibility of

¹ John Cole, George Brown and Daniel Hitchcock to Honb Stephen Hopkins, Esq, East Greenwich, 19 January, 1773, enclosed in Stephen Hopkins to Colonel Wanton, Providence, 20 January, 1773, American Manuscripts, John Carter Brown Library, Brown University.

² Henry Marchant to David Jennings, Newport, 25 January, 1773, Henry Marchant Letter Book, Newport Historical Society.

³ *Providence Gazette*, 24 April, 1773.

⁴ In this instance the reprint came from the *Providence Gazette*.

overseas trials was viewed as ". . . justly alarming to every Lover to his Country, and not at Rhode Island merely, but as a flagrant Attack upon American Liberty in general." ⁵

Interest in the question of the commission's legality extended as far as England—for those Americans residing there. One anonymous writer referred to the commission as "... a dangerous, arbitrary and unconstitutional proceeding. ..." ⁶ He wanted to mobilize all Americans in England to support a resolution which would denounce the commission as both nefarious and unconstitutional. Legal recourse would also be made available to Rhode Islanders brought to England for trial. As an afterthought he rejected the resolution: "Upon reflection I believe we shall state our thoughts, in a petition to the King, praying him to revoke the commission, as arbitrary, unconstitutional, and reproachful." ⁷

Not everyone looked upon the commission as the first step in the undermining of English liberties and republican government. Governor Hutchinson predictably came to the defense of the Crown. The prerogative of the King, he thought, superseded any rights extended to the people of a colony by their charter:

An authority to grant such commission is indisputably in the crown, although the inquiry be made in the colony, and is a necessary consequence of the authority to order the royal navy, and every part of it, to such colony; which cannot be presumed to be taken away, or lessened, by force of any charter whatever⁸

⁵ *Virginia Gazette*, 18 March, 1773.

⁶ *Newport Mercury*, 21 June, 1773.

⁷ *Ibid.*

Chief Justices Smythe and Oliver had little difficulty reconciling the commission with British constitutional ideas. Smythe argued ". . . that tho' extraordinary in its nature, [it] seems properly adapted to vindicate the authority of the Crown, and secure obedience to Law and Government, by which alone distant Colonies can be held in Subjection."⁹ Although Oliver was reticent on the issues of indictments and overseas trials, he conceded the King's prerogative to investigate some matters in which the Crown's interests were concerned. In his defense of the Crown, he pointed to the commissioners' charge to examine all grievances in Rhode Island, whether on the part of the colony or the navy, as an indication of the Crown's even-handedness.¹⁰

The legality or constitutionality of the commission was only one concern; there were others. The dialogue over the nature of the commission continued. Rhode Islanders had shown initial perplexity in the fall of 1772 when they assumed that the commission was a court of oyer and terminer. But that confusion was no longer current in Rhode Island, even though other

⁸ Thomas Hutchinson, *The History of the Colony and Province of Massachusetts Bay*, Lawrence Shaw Mayo, ed. (Cambridge, Mass.: Harvard University Press, 1936), III, 264, In footnote.

⁹ Frederick Smythe to The Earl of Dartmouth, 8 February, 1773, F. W. Ricord and W. Nelson, eds., *Documents Relating to the Colonial History of the State of New Jersey* (Newark: 1886), First Series, X, 400.

¹⁰ Franklin B. Dexter, ed., *The Literary Diary of Ezra Stiles* (New York: Charles Scribners, 1901), I, 383.

colonials may have labored under like misconceptions. Informed Rhode Islanders understood it for what it was: an investigative body to inquire into the events surrounding the destruction of the *Gaspee*. But for what purpose were the findings of the investigation to be used? This was the real confusion.

The bewilderment was perhaps attributable in part to the dual purpose of the commission. On the one hand its members were empowered to gather evidence for indictments, on the other to conduct a full and general inquiry into the causes of the destruction of the *Gaspee*. This necessarily included an investigation into grievances by Rhode Islanders and by navy and customs officers as well.¹¹

Part of the bewilderment may also have resulted from the dual role of the commissioners themselves. Unlike the grand jury which they appeared to be subrogating, there was no presiding judge and impaneled jurors. Instead, five men chosen by the King, were at once the judges and the jurors. The commissioners attenuated their powers by placing total emphasis on their role as jurors. Wrote Peter Oliver: "The Commissioners Part was in the Nature of a Grand Jury, to inquire & find a Bill, & the Magistrates of the Colony were to send them over to England."¹² The Reverend Mr. Stiles

¹¹ The commissioners would lend a loose interpretation to article III in their instructions which empowered them to seek indictments with the co-operation of the Superior Court. Instead they emphasized their other role, *viz.*, to investigate the causes of the Gaspee affair and then to submit their findings in a report to the King.

¹² *Peter Oliver's Origin and Progress of the American Rebellion: A Tory View*, Douglass Adair and John A. Schultz, eds. (San Marino, Calif: The Huntington Library, 1961), p. 99.

amplified this point. He wrote that ". . . the Commissioners were not clearly empowered *solely and by themselves* to seize and commit any. At least this was not so clearly defined and prescribed as one would have imagined . . ." ¹³ He blamed the ambiguity of the wording to the intentions of the ministry which were not clearly understood by anyone. ¹⁴ In short, the ministry had never candidly revealed what it hoped to gain from the investigation at Newport.

The plea of one cleric from Trenton, New Jersey, the Reverend Mr. Elihu Spencer, was indicative of the desire for clarification exhibited by observers from other colonies. He waited " ' . . . with Impatience to know the Issue . . . ' " and hoped that the Reverend Mr. Stiles might furnish him with " ' . . . a Detail of everything doing, talked of, surmised, threatened &c. . . . ' " ¹⁵ For his part, Stiles was " . . . glad to find that the Sons of Liberty in other Colonies felt the Attack upon us. . . . " And so he obliged Spencer in a lengthy, opinionated discourse, omitting no detail, however small. ¹⁷

This strong desire to know more about the commission was shared by Virginians also. One member of the Virginia House of Burgesses, Richard Henry Lee,

¹³ Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey. Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 350.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

turned to Samuel Adams for enlightenment:

At this distance, and through the uncertain medium of newspapers, we may never perhaps have received a just account of this affair. I should be extremely glad, sir, when your leisure permits, to have as true a state of the matter as the public with you has been furnished with.¹⁸

Adams, who viewed the commission as a dangerous substitute for grand juries, detested the "... court of inquisition ..." which was enough "... to excite indignation in every heart capable of feeling."¹⁹ He had not as yet examined the commission for himself, but since he was expecting an authentic copy he promised to forward it to Lee.²⁰

Shortly before receiving Adams' explanation, Lee sought out the views of John Dickinson of Pennsylvania. He spoke of "... a new court of criminal jurisdiction. . . ." ²¹ This erroneous image of the commission was derived from the information which Lee received from the press and from Adams:

Neither the power, nor the object of this Court, had been perfectly understood here; but in general we have been informed that it was designed to put in execution the dangerous advice of the two houses of Parliament in 1769 to seize obnoxious Americans and convey them to Britain for trial.²²

¹⁸ Richard Henry Lee to Samuel Adams, 4 February, 1773, William V. Wells, *The Life and Public Services of Samuel Adams* (Boston: Little, Brown and Co., 1865), II, 65.

¹⁹ Samuel Adams to Richard Henry Lee, 10 April, 1773, Wells, *Samuel Adams*, II, 67.

²⁰ *Ibid.*

²¹ Richard Henry Lee to John Dickinson, Chantilly in Virginia, 4 April, 1773, *The Letters of Richard Henry Lee*, James Curtis Ballogh, ed. (New York: The Macmillan Co., 1911), I, 83.

Basing his statements upon a letter which he had received from a special committee of the Rhode Island General Assembly, Dickinson told Lee that the commission was appointed ". . . for inquiring into, and making report to his Majesty, of all the circumstances, relative to the attacking . . . the Gaspee schooner. . . ." ²³ It did ". . . not give any express authority to the commissioners to arrest and commit . . ." ²⁴ Dickinson's letter must have removed much of Lee's misinformation.

As to the commissioners themselves, precisely what color did they give to their instructions? From the outset they had endeavored to reassure doubters that they had not come to subvert the legal processes of the colony. Stiles agreed that the commissioners ". . . were inclined to interpret in the mildest Sense." ²⁵ Nonetheless he found the commission ". . . very alarming under the most favorable and mild Constructions. . . ." ²⁶ So did many others. While on circuit in Massachusetts, Oliver was compelled to set time aside before court sessions to explain that the commission was not a court to

²² *Ibid.*

²³ John Dickinson to Richard Henry Lee, n.d., Richard H. Lee, ed., *Memoir of the Life of Richard Henry Lee, and His Correspondence* (Philadelphia: H. C. Carey and I. Lea, 1825), I, 92.

²⁴ *Ibid.*

²⁵ Dexter, *Stiles Diary*, I, 350.

²⁶ *Ibid.*

try, but rather an investigative body in the nature of a grand jury.²⁷ Such was the intensity of public concern.

Whether the commissioners really believed what they said in public was open to question. Henry Marchant was convinced that they were enough in doubt to write home for ". . . more explicit instructions--And if possible to get some better information as to their Power and the True Nature and design of their Commission" ²⁸ Their public declarations clearly did not coincide with the private pronouncements of Prime Minister Frederick Lord North. Josiah Quincy, Jr., while visiting England, was granted an interview with the head of the ministry. Quincy noted North's comments upon the *Gaspee's* destruction and the nature of the commission,

. . . and in direct terms [North] twice said that the Commissioners were appointed *to try* that matter, and had transmitted accounts that they could obtain no evidence. This declaration being in flat contradiction to what I had several times heard Chief Justice Oliver declare to be the case . . .²⁹

²⁷ "Journal of Josiah Quincy, Jun. During his Voyage and Residence in England from September 28th 1774 to March 3rd 1775," *Proceedings of the Massachusetts Historical Society* (Boston: by the Society, June 1917), L, 440-41. Stiles writes, ". . . in riding the Circuit of the Superior Court of which he was Chief justice, the Uneasiness of the people was so great against him that he had been obliged to declare in his Charges to the Grand Juries the real Powers of this Rhode Island Commission." Dexter, *Stiles Diary*, I, 382.

²⁸ Henry Marchant to Samuel Ward, 28 January, 1773, *Correspondence of Governor Samuel Ward, May, 1775-March, 1776 and Genealogy of the Ward Family*, Bernhard Knollenberg, ed., and Clifford P. Monohon, compiler (Providence: Rhode Island Historical Society, 1952). p. 22.

²⁹ "Journal of Josiah Quincy, Jun. During his Voyage and Residence in England from September 28th, 1774 to March 3rd 1775," *Proceedings of the Massachusetts Historical Society* (Boston: By the Society, June, 1917), L, 440-41.

Members of the commission showed themselves to be in close agreement with the ministry's interpretation, even though their public statements were apparently tailored to mollify such construction on the part of colonials. Frederick Smythe intimated that he might have found indictments, arrests and transportation to England a welcomed development. But he believed that arrests would never materialize, even if the evidence justified it, because ". . . there seems to be an universal abhorrence of such a proceeding not only in Rhode Island, but in all the neighbouring Colonies [that] in truth I am persuaded that nothing but an armed force wd effect it."³⁰ Peter Oliver attributed the unpopularity of the commission to Rhode Island's republican government.³¹ On the issue of overseas trials he was, like Smythe, uncommunicative.

Smythe had never treated the *Gaspee* burning lightly. For him it was an ". . . atrocious offence . . ." which ". . . must excite indignation in the mind of every lover of justice, and real friend to the Authority and dignity of Government. . . ."³² But he did not believe that the local justices would issue warrants for arrests, or that the people would countenance such a move;

³⁰ Frederick Smythe to the Earl of Dartmouth, 8 February, 1773, F. W. Ricord and W. Nelson, eds., *New Jersey Documents*, First Series, X, 399.

³¹ *Peter Oliver's Origin and Progress of the American Rebellion: A Tory View*, Douglass Adair and John A. Schutz, eds. (San Marino, Calif.: The Huntington Library, 1961), p. 99.

³² Frederick Smythe to the Earl of Dartmouth, 8 February, 1773. F. W. Ricord and W. Nelson, eds., *New Jersey Documents*, First Series. X, 395.

and since the commissioners did not consider themselves empowered to issue indictments and make arrests (even though Lord North said they were), the chance of any indictments being secured was highly doubtful:

. . . I should have been happy to acquaint your Lordship, that success in the execution of the Commission had been equal with my wishes, that the ends of public justice might thereby be effectually attained, but from what I have hitherto observed, in the progress of our enquiry, and from such intelligence as I have obtained, I cannot help expressing my fears that that intention of Governmt will be defeated, and the offenders screened from the hand of justice.³³

The King's proclamation, with its large reward, was the only hope of encouraging some people in Rhode Island to testify on behalf of the Crown. But Smythe remarked wearily that ". . . to keep [the names of the culpable] secret is now a common cause. . . ."³⁴

Clearly, Smythe and Oliver wanted the perpetrators tried as did the ministry. Both Commissioners were amenable to gathering evidence toward this end. But public opinion in Rhode Island made such a position most imprudent if not dangerous. The discrepancy between what the commissioners gave as their stated beliefs in public and what they professed in private letters may be understood in the light of attitudes of Rhode Islanders. It was good politics to tell people what they wanted to hear. Rhode Islanders did not want to be told that the commissioners had come to listen to testimony with the intention of securing indictments. Instead,

³³ *Ibid.*

³⁴ *Ibid.*, p. 397.

they found other facets of the commission's power to dwell upon. While Stiles feared the constitutional implications of the commission he was hopeful that their inquiry would "... prove an Exculpation of the civil Government of this Colony."³⁵ Marchant was also convinced that the result of the investigation would be an exoneration of Rhode Island's civil officials who were "... treated with the highest Indignity, by the Marritine Gentry. . . ."³⁶

It is doubtful that the commissioners wrote home to receive clarification regarding the nature of their commission, which they understood. Rather, it was the ministry's true intention and its determination to carry through with the worst aspects of the commission which were really in need of clarification. The ministry knew what it was about. The commissioners were aware of this intent as well. Consequently colonials doubted the nature of the commission as it was explained to them. If the commissioners prevaricated, it was due to their inability to foretell what events might hold in store for them. Henry Marchant perceived the quandary of the ministry and the commissioners with uncanny exactness: "What will be the final Issue of this Commission it is impossible to guess—a Thousand Things may arise to divert if not alter the Purpose of admin . . ."³⁷

³⁵ Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 350.

³⁶ Henry Marchant to Samuel Ward, 28 January, 1773, Knollenberg, *Ward Correspondence*, p. 22,

³⁷ *Ibid.*, p. 23.

While Americans were deeply engrossed in the ramifications of the commission of inquiry, Lord Dartmouth received and disposed of various routine problems associated with the Newport matter. The disrespect of Rhode Islanders for the Admiral's flag was one such problem. He would acquaint Governor Wanton with the proper procedure for receiving royal vessels in the colony.³⁸ The question of Dudingston's attendance at Rhode Island was another matter. The Captain's slow convalescence prohibited his taking such a taxing trip to America. Two of his former crew members, William Dickinson and Bartholomew Cheever, had been present in his cabin when his wounds were being bound, and the Lords of the Admiralty thought that the seamen's testimony would suffice instead. With the Secretary's approval Dickinson and Cheever left England aboard the *Marlborough* in March, arriving in America at April's end.³⁹

Dartmouth also gave quick approval to Montagu's request that he be relieved of his duties at Newport, in order to afford him more time to administer naval matters at Halifax and Boston. The instructions of the

³⁸ Lord Dartmouth to Rhode Island Governor and Company, Whitehall, 3 March, 1773, Collected Letters from 1731 to 1849, VII, Item 96, Rhode Island State Archives.

³⁹ Lords of the Admiralty to Lord Dartmouth, Admiralty Office, 16 February, 1773, American and West Indies, 119, folio 26. Lord Dartmouth to the Lords of the Admiralty, Whitehall, 19 February, 1773, American and West Indies, 119, folio 27. John Montagu's Journal. 29 April, 1772. Lords of the Admiralty to Lord Dartmouth, Admiralty Office, 4 March, 1773, Colonial Office, 5:119, folio 32, Papers Relating to the Gaspee, Compiled by Walter A. Edwards, Rhode Island Historical Society.

commissioners were thus appended. The Admiral would be permitted to appoint one of his subordinate officers in his stead.⁴⁰

Dartmouth whose sympathies for the colonies were widely known, had indicated his distaste for the concept of overseas trials. If he had worried about the outcome of the commissioners' activities, three factors might have given him some comfort. First, adjournment would provide breathing time and perhaps dilute the intense feelings of the ministry and of Rhode Islanders. He informed the commissioners that the King approved of their decision to adjourn.⁴¹ Secondly, the absence of available witnesses mitigated the likelihood of any convicting evidence, indictments, arrests and ultimate confrontations. Thirdly, Rhode Islanders by their behavior had made the use of troops unnecessary and had defused another explosive time-bomb. Dartmouth did not fail to compliment Rhode Islanders in this regard. He wrote, ". . . the King is graciously pleased to approve of the Respect shewn to His Royal Commission, and the Decency and order with which it was

⁴⁰ Lords of the Admiralty to Lord Dartmouth, Admiralty Office, 1 March, 1773, American and West Indies, 119, folio 29a. Lords of the Admiralty to Lord Dartmouth, Admiralty Office, 18 March, 1773, Colonial Office, 5:119, folio 35. Lord Dartmouth to Lords of the Admiralty, Whitehall, 20 March, 1773, American and West Indies, 119, folio 37, Edwards, Gaspee Papers, Rhode Island Historical Society. Lords of the Admiralty to John Montagu, 26 March, 1773, duplicate, Gaspee Papers, Rhode Island State Archives.

⁴¹ Lord Dartmouth to Commissioners at Rhode Island, Whitehall, 10 April, 1773, Colonial Office, 5:1285, Proprieties, folios 361, 362, 364, Edwards, Gaspee Papers, Rhode Island Historical Society.

Proclaimed." ⁴²

But there were other matters which proved distressing to the Secretary. His letter of September 4 to the Governor of Rhode Island had been made public. To Dartmouth's mind, the Governor had violated a trust:

... the publication in the common newspaper of parts of my Secret and Confidential Dispatch of the 4th of September last, addressed personally to yourself, cannot I fear be considered as entirely corresponding with those Assurances you gave me of paying the strictest Attention and Deference to such orders as you shall receive from me.

I am sensible that you could not do otherwise than communicate the Substance of that Dispatch to the other parts of your Corporation, but I refer it to your Candour whether it was proper to give Copies of it? ⁴³

The breach of confidence must have convinced the Secretary of the need to be more guarded in his future dealings with the Governor. Wanton's position as head of the commission also offered some unpleasant implications. Confidential matters from the State department could no longer be trusted with the Governor. If, as Stiles said, the commissioners wrote home for further **instructions**, it was obvious that Dartmouth would not confide in Wanton any of the ministry's intentions regarding the *Gaspee* commission. Any change in attitude in the ministry's "design" would likely have been communicated to such confidantes as Frederick Smythe or Peter Oliver, perhaps Daniel Horsmanden.

On May 25, after a recess of some four months, Robert Auchmuty

⁴² Lord Dartmouth to Joseph Wanton, Whitehall, 10 April, 1773, Collected Letters from 1731 to 1849, VII, Item 97, Rhode Island State Archives.

⁴³ *Ibid.*

and Peter Oliver joined Wanton in Newport, completing the necessary quorum for business.⁴⁴ The commission resumed its hearings the following day as anticipated, although it was decided to forego all important matters until the arrival of Horsmanden and Smythe. They arrived in Newport by the end of the month.⁴⁵

Although Montagu considered the possibility of going to Newport in early June if his vessel (the *Captain*) arrived from Halifax on schedule, he gave no other indication of a willingness to make the trip. He was more than eager to delegate his duties to the senior officer at Newport, Robert Keeler, who could boast the title of commodore for the time being.⁴⁶ However, Commodore Keeler was most reluctant to come ashore in the exercise of his new authority. Several writs had been taken out for his arrest regarding seizures made by him some time ago. He made arrangements to have Midshipman Dickinson and mariner Cheever escorted to the council chamber by one of his officers, whenever their presence should be requested.⁴⁷ As no one in Rhode Island

⁴⁴ *Newport Mercury*, 31 May, 1773.

⁴⁵ Commissioners to Robert Keeler, Newport, 27 May, 1773, Gaspee Papers, Rhode Island State Archives. John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England* (Providence: 1857), VII, 166. W.R. Staples, *The Documentary History of the Destruction of the Gaspee* (Knowles, Vose and Anthony, 1845), p. 43, University microfilms, American Culture Series, University of Michigan.

⁴⁶ *Newport Mercury*. 12 April, 1773.

⁴⁷ Robert Keeler to Joseph Wanton, Esq., President of his Majesty's Commission at Newport, Rhode Island, *Mercury*, in Rhode Island Harbor, 27 May, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII, 166. Staples, *Documentary History*, p. 43, University microfilms, American Culture Series, University of Michigan.

could be entirely sure just what these two British navy personnel were privy to, their presence on board the *Mercury* and their impending testimony made Newporters a bit edgy. The *Newport Mercury* acknowledged their arrival and the fact that they had been sent hither ". . . to support some *extraordinary* charges."⁴⁸

Dickinson and Cheever testified on June 1. Although the midshipman did not know the names of any of the participants, he claimed that he could identify the men who called themselves the captain and the sheriff.⁴⁹ But in the absence of apprehended suspects, his evidence was useless. A physical description of the alleged leader of the attackers was the most he could offer. One, referred to as the captain, was a well-dressed, swarthy, robust man, with a hoarse voice and a full face.⁵⁰ His description of the head sheriff, a tall genteel man, was even more elusive. Dickinson had also observed the two surgeons who dressed Dudingston's wounds. One was a man of about eighteen years. He was approximately five feet six inches tall; he had light brown hair, and his face was marred with small pox scars; the other surgeon was a tall, thin, genteel man of about twenty-two, five feet eight inches tall.

⁴⁸ *Newport Mercury*, 31 May, 1773.

⁴⁹ John Montagu to the Commissioners, Boston, 24 May, 1773, Gaspee Papers, Rhode Island State Archives. Staples, *Documentary History*, p. 43, University microfilms, American Culture Series, University of Michigan.

⁵⁰ Deposition of William Dickinson, 1 June, 1773, Gaspee Papers, Rhode Island State Archives, Bartlett, *Records*, VII. 167-69. Staples, *Documentary History*, pp. 44-45, University microfilms, American Culture Series, University of Michigan.

Dickinson had observed several blacks on board as well, although he could offer no names.⁵¹ Like Dickinson, Cheever saw the people who had burned the schooner. Again while at Pawtuxet, he encountered two of the participants. But his ability to identify was dependent upon the apprehension of suspects.⁵²

The commissioners had issued several summonses to witnesses who had been called in January. Providence attorney John Cole, heeding the advice of Chief Justice Hopkins, appeared at the council chamber on June 3: on his way to Sabin's Tavern on the evening of June 9, 1772, someone had told him (although he could not remember who) that the *Gaspee* had run aground. But he denied knowing the identity of any who had participated in the plan, or in fact that there was a plan.⁵³

Judge John Andrews had also been summoned by the commission in January. Like Cole he made no connection between the beating drum and the plan to destroy the schooner. Consequently it was his surprise to learn of the vessel's destruction the next morning. Having gone along with Darius Sessions to visit Dudingston at Pawtuxet, Andrews could recount the efforts

⁵¹ *Ibid.*

⁵² Deposition of Bartholomew Cheever, 1 June, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII, 169-70. Staples, *Documentary History*, p. 45, University microfilms, American Culture Series, University of Michigan.

⁵³ Examination of John Cole, 3 June, 1773, Gaspee Papers, Rhode Island State Archive's, Bartlett, *Records*, VII, 170. Staples, *Documentary History*, p. 45, University microfilms, American Culture Series, University of Michigan.

which the Deputy Governor had made to assure the comfort and safety of the *Gaspee* crew and its wounded commander. A vain attempt was made to acquire information concerning the perpetrators, because Dudingston refused to lend his assistance.⁵⁴

Along with Cole and Andrews, George Brown had also dined at Sabin's that night. His testimony corroborated Cole's statement. Cole and Brown had protested the commission's powers and constitutionality when they were first called to testify. Perhaps there was motive in their careful designation of the schooner's location at Warwick township, Kent County, Rhode Island;⁵⁵ they seemed to be saying that the act of destruction had occurred within the colony's boundaries and was unmistakably within the jurisdiction of the colony's courts. As in January, James Sabin, Daniel Hitchcock, Arthur Fenner and Saul Ramsdale declined to attend.⁵⁶

One of the witnesses, James Helme, was an associate justice of the Superior Court of Judicature, Court of Assize, and General Goal Delivery. He had presided at the October session. Despite the fact that it was not the

⁵⁴ Deposition of John Andrews, 5 June, 1773, Gaspee Papers, Rhode Island State Archives, Bartlett, *Records*, VII, 171. Staples, *Documentary History*, pp. 45-46, University microfilms, American Culture Series, University of Michigan.

⁵⁵ Examination of George Brown, Newport, 5 June, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII, 172-73. Staples, *Documentary History*, pp. 46-47, University microfilms, American Culture Series, University of Michigan.

⁵⁶ Deposition of William Mumford, Jr., Newport, 5 June, 1773, Gaspee Papers, Rhode Island State Archives.

established procedure for a judge to give a general or specific charge to the grand jury, Helme promised himself that he would so charge the jury with an investigation into the attack, if he were the presiding judge. He was privileged to preside over the court when he returned from two months on the circuit. He said that his absence of several weeks was responsible for his forgetting entirely about the attack. As outrageous as it sounded, Judge Helme pretended to be oblivious to the current topic of conversation in Rhode Island! He never mentioned the *Gaspee* affair to the Grand Jury in October, 1772.⁵⁷

The commissioners had heard from six witnesses: Midshipman William Dickinson, Mariner Bartholomew Cheever, Attorneys John Cole, and George Brown, and Judges John Andrews and James Helme. It was obvious that the weather had little to do with the accessibility of witnesses. January's snows had brought more testimony than the mild spring weather had. Because of the remote likelihood of the examination of additional deponents, the commissioners were ready to submit their findings to Rhode Island's superior court.⁵⁸

Initially Chief Justice Hopkins was resistant to the request that he appear. His reluctance to afford the commissioners any legal recognition

⁵⁷ Examination of James Helme, Newport, 5 June, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII. 172. Staples, *Documentary History*, p. 46, University microfilms, American Culture Series, University of Michigan.

⁵⁸ Commissioners to Stephen Hopkins, Newport, 7 June. 1773, Commissioners to Metcalf Bowler, Newport, 7 June, 1773, Gaspee Papers. Rhode Island State Archives. Reference to Helme's appearance is found in Dexter, *Stiles Diary*, I, 380.

was understandable. The public seemed to share his chary approach to this dilemma. Despite his inclinations, two of his colleagues, James Helme and Metcalf Bowler, planned to make their appearance. The Reverend Mr. Stiles cautioned them:

I observed it was a very delicate Transaction and that if the Public could not have an intire *Confidence* in him [Bowler] and Judge Helme that they would stand firm, there would be great &c. He replied that he had reason to think, it was the finishing off of the affair—and that the Commissioners intended nothing more than to lay before the justices such Matters and Evidences as they had collected, and request them particularly *to charge the Jurors* at the next Sup. Court of Judicature with an inquiry &c. and *so take Leave of the Affair*. I hope he may be right.⁵⁹

And right he was. On June 10 selected examinations were placed before the Superior Court by the commissioners. These were received by the Chief Justice, who decided to come after all, and three of his colleagues, James Helme, Metcalf Bowler, and J. C. Bennet. Deputy Governor Sessions was also present.⁶⁰ The justices were given two depositions of Aaron Briggs, two of Patrick Earle and depositions from other crew members, Midshipman William Dickinson and Mariner Peter May, the justices were given the option of re-examining Dickinson if they so chose. Instead they later asked for the deposition of Samuel Tompkins, Samuel Thurston, Somerset and Jack.⁶¹

Another witness, Samuel Falkoner, was examined by three of the

⁵⁹ Dexter, *Stiles Diary*, 10 June, 1773, I, 380.

⁶⁰ Commissioners to Darius Sessions, 6 June, 1773, Gaspee Papers, Rhode Island State Archives.

⁶¹ The Report of the Commissioners to the King, Newport, Rhode Island, 22 June, 1773, Bartlett, *Records*, VII. 181.

commissioners after the superior court had handed down its opinion. Falkoner attempted to destroy the credibility of Aaron Briggs as a witness. Although he was from Bristol, Falkoner had boarded at Samuel Tompkins' farm on Prudence Island from April to July, 1772, as he had done the summer before. In addition to clearing his own name, Falkoner probably thought his testimony could help untangle the gnarled yarn which he believed Briggs had spun. He denied that he had accompanied Briggs on the night of the schooner's destruction. In fact, said Falkoner, Briggs had never left the farm either. He milked the cows at sunset and remained on the island the entire evening.

A few days after the burning, a group of people from Bristol came to the island and told Tompkins, and several of his servants, what had taken place at Namquit Point. Briggs had first heard of the incident at this time. Falkoner was quick to add that no names were mentioned; he did not suggest where Briggs might have heard them. His only admission was that he and Briggs had visited Potter's ropewalk in Bristol the summer of 1771. He casually dismissed Briggs ". . . as a person much addicted to lying."⁶²

In addition to Falkoner's examination, the commissioners were once again aided by Darius Sessions in their efforts to tie up the loose ends of

⁶² Faulkner of Gould Island whom Wanton describes as "one Faulkner" is not to be confused with Samuel Falkoner of Bristol. Bartlett and Staples perhaps confuse him with Samuel Falkoner. Throughout their works they refer to him as Samuel Faulkner instead of Samuel Falkoner. The manuscript spelling is Samuel Falkoner.

their investigation. He related an incident which had occurred in March, 1772, and which he undoubtedly considered proof positive of William Dudingston's truculence. He referred to the written petition from several prominent Providence merchants,⁶³ who protested the behavior of the navy officers stationed at Rhode Island. That very day. Sessions had carried the matter before the Chief Justice who had returned the following opinion:

... for any person whatever to come into the Colony, and, in the Body thereof, to exercise any Authority by Force of Arms, or otherwise, without shewing his Commission to the Governor, and (if a Customhouse officer) without being sworn into his Office, was guilty of a Tresspass, if not piracy. . . .⁶⁴

After giving careful study to the examination, the justices gave their opinion. Only two depositions made mention of any individuals by name. Mariner Peter May referred to someone named Greene, and Aaron Briggs used the names Potter and Joseph and John Brown. According to the court, Briggs' statement was elicited amidst threats of punishment. The examination was also strewn with contradictions. Finally refutations from his owner, (Samuel Tompkins), Tompkins' relative (Samuel Thurston), and fellow

⁶³ The names of the petitioners were John Brown, Nathan Angell, Joseph Nightengale, Job Smith, Thomas Greene, Ambrose Page, James Lovett, and Nicholas Brown. Although Bartlett and Staples do not mention the name of John Innes Clark, his was also included in the manuscript.

The dates of the Staples and Bartlett copies do not coincide with the manuscript either. Both editors give June 12, 1772, as the date, rather than June 12, 1773. Deposition of Darius Sessions, 12 June, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII. 174-175. Staples, *Documentary History*, pp. 47-48, University microfilms, American Culture Series, University of Michigan.

⁶⁴ *Ibid.*

workers (Somerset and Jack) sufficiently established proof in the court's judgment of Briggs' presence at home on June 9 and 10. Captain Linzee's refusal to permit Justice Bowler to examine the witness, convinced the court that there was nothing of substance to Briggs' statement; rather they inferred Linzee had taken what little information Briggs possessed, and had embellished it in an effort to make it as creditable as possible. Linzee's reluctance to surrender Briggs to the civil officials, thought the court, thus became all the more explicable.

The court was also of the opinion that the vagueness of Peter May's testimony rendered it valueless. He had not mentioned the Christian name of Greene. The difficulty was compounded, thought the justices, by the large number of Greenes who lived in Rhode Island. Shortly after the adjournment in January, Chief Justice Hopkins mentioned to Nathanael Greene of Coventry that his name had been implicated by testimony. Greene flatly denied the charge, maintaining that he could prove his whereabouts. Rufus Greene, Jr., an employee of the firm Jacob Greene and Co., was also compelled to give a statement before a local justice of the peace. If not to clear his own name, then certainly to disesteem Dudington's.⁶⁵

Interestingly, the justices did not take any notice of the names which Briggs had mentioned. In discounting the testimony of the black servant, they

⁶⁵ Nathanael Greene to Samuel Ward, Coventry, 25 January, 1773, "Nathanael Greene's Letters to 'Friend Sammy' Ward," Clifford P. Monohon and Clarkson A. Collins, III, eds., *Rhode Island History*, XVI, No. 3 (July, 1957), 85.

apparently saw no need to make reference to the people whom he had accused. One of these people, according to the Reverend Mr. Stiles, could prove his innocence because a ". . . White Woman in the Family [could vouch for] his being abed with his wife at Bristol after Eleven o'clock that Night. . . ." ⁶⁶

The justices concluded that the documents submitted to them ". . . do not induce a probable suspicion . . ." ⁶⁷ The court vowed to take ". . . every legal effort in detecting and bringing to condign punishment, the persons concerned . . ." ⁶⁸ Upon receipt of the opinion, the commissioners were confronted with the choices, whether to concur or demur. Even though the justices had invited them to review the opinion, they declined, eliminating any possible accusation that they had tried to supersede the superior court. ⁶⁹

⁶⁶ Ezra Stiles to Rev, Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, 1, 350. Stiles was probably referring to Simeon Potter of Bristol whose name was implicated in the testimony of Aaron Briggs. Stiles' inference that a white woman (perhaps a servant) could vouch for Potter's presence at home on the evening in question implicitly discredited Briggs' statement because he was black, the suggestion being that his race made his story unreliable, whereas the white woman's was credible.

⁶⁷ Opinion of the Justices of the Superior Court, 11 June, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII, 175. Staples, *Documentary History*, p. 48, University microfilms, American Culture Series, University of Michigan.

⁶⁸ *Ibid.*

⁶⁹ Commissioners to the Chief Justice and Assistants, Newport, 12 June, 1773, Gaspee Papers, Rhode Island State Archives. Another manuscript copy is in Manuscript Records, Gaspee Commission papers, John Carter Brown Library, Brown University. Bartlett, *Records*, VII, 176. Staples, *Documentary History*, p. 48, University microfilms, American Culture Series, University of Michigan.

In so doing, they once again reiterated their role as an Investigative body of Jurors.

With the opinion of the superior court now in hand, drafting the report to the King became the next order of business. Of all the commissioners, Chief Justice Frederick Smythe was the only one who revealed a predisposition to assist the ministry in its attempt to reveal the identity of the lawbreakers. It was Smythe who had first asked whether the grand jury had been charged with an investigation into the *Gaspee* burning. The ultimate outcome of the commissioners' deliberations disappointed him. During a discussion with Collector Dudley, Smythe perceived an opportunity to resuscitate the investigation. Shortly after their meeting Dudley sent Smythe a lengthy ". . . review of some of the hindrances and obstructions which the officers of the Navy and Revenue have met with in . . ." Rhode Island.⁷⁰

He had in mind a customs house cutter, the *Liberty*, seized and destroyed by Rhode Islanders in 1769. The perfunctory air with which the civil officials treated such lawlessness, struck Dudley as being outrageous. According to the collector, this incident, along with numerous others, was illustrative of Rhode Island's flagrant disregard for the navigation laws and customs officials. He asked Smythe to ". . . consider this . . . and draw

⁷⁰ Charles Dudley to Frederick Smythe, Rhode Island, 12 June, 1773, Frederick Smythe Papers, American Philosophical Society. This letter was recently discovered by Larry Gerlach. For a printed copy see his article, "Charles Dudley and the Customs Quandary in Pre-Revolutionary Rhode Island," *Rhode Island History*, XXX, No. 2 (Spring, 1971). 53-59.

Your conclusions. . . ." ⁷¹ Dudley said of the *Liberty* affair, ". . . I have always considered [it] as a principal encouragement and perhaps the chief cause of the subsequent and unhappy fate of Lieutenant Dudingston and his Majesty's Schooner *Gaspee*." ⁷² Smythe took these words to heart.

On June 21, the New Jersey Justice threatened to prolong the investigation with a new motion. He proposed that his colleagues undertake an investigation into the attack on the *St. John* by Rhode Islanders in 1764, as he considered it a possible primary cause in the *Gaspee* attack. Why Smythe chose the *St. John* incident is not entirely clear. ⁷³ Perhaps in another

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Although it is Mr. Gerlach's purpose to cast additional light upon the Smythe proposal, he does not offer any additional evidence of substance. The only revelation which emerges from this letter is that Dudley was the inspiration for Smythe's action. There are several problems however, left unsolved. For instance, when Smythe made his motion, he mentioned that he had acquired his information ". . . on Saturday last." Mr. Gerlach suggests that this was a reference to Dudley's conversation and subsequent letter to Smythe.

Yet the Saturday before his motion of June 21 was June 19, and not June 12, the date of the letter (if we take Smythe's statement, ". . . on Saturday last . . ." to be correct). There is another problem. In the letter of June 12 Dudley speaks at length of the *Liberty*. Yet in his motion of June 21, Smythe suggests that the commissioners investigate the *St. John* incident.

Perhaps there were two meetings, one which led to the letter of June 12, and perhaps another of June 19, the following Saturday. Smythe might have been persuaded at this second meeting to mention the *St. John* rather than the *Liberty*. Such a maneuver would reopen the investigation, using 1764 (the date of the *St. John's* attack) rather than 1769 (*Liberty* burning) as the beginning of a new inquiry. An investigation of the facts dating back to 1764 would have brought the entire relationship of the customs officers and Rhode Islanders from the time of the commercial reforms of 1763, under complete scrutiny.

conversation with Dudley he was advised to make reference in his motion to the *St. John* rather than the *Liberty*. To Investigate this occurrence of 1764, as well as the burning of the *Liberty* of 1769 would necessitate an exhaustive inquiry into the activities of customs officers, Rhode Islanders, and the civil officials during the past nine years. From the standpoint of time and energy alone, the implications of the motion were extremely menacing, particularly to Rhode Island, which had a history of such attacks upon royal vessels. Governor Wanton realized the dire implications for his colony.

Colonel Joseph Wanton, Jr., who was lieutenant governor of Rhode Island in 1764, and fort gunner Daniel Vaughan were both knowledgeable of the *St. John* incident. Wanton was confident that a conversation with them would resolve any uncertainties that the commissioners might harbor regarding the *St. John*. Smythe's motion had created last-minute doubts and second thoughts for the others. He stood firm: Governor Wanton remained adamant also. Believing such an investigation to be unproductive, Horsmanden quietly concurred with the Governor. Judge Auchmuty soon aligned with the majority.

Chief Justice Peter Oliver had been called away to Massachusetts where he had a commitment to preside at the circuit court.⁷⁴ Had he been present, he undoubtedly would have lent a sympathetic ear to the Smythe

⁷⁴Dexter. *Stiles Diary*, I, 384. Peter Oliver to Lord Dartmouth, Middleborough, 20 July, 1773, Colonial Office. 5:762. folio 771-74. Edwards, Gaspee Papers, Rhode Island Historical Society.

proposal. Although his absence unquestionably doomed the motion Frederick Smythe, the commission's maverick, was not inclined to gloss over what he thought to be in the best interest of the inquiry--simply to avoid a confrontation with colonial officials or disaffected segments of the population. Dudley's letter had fortified Smythe's unwavering determination to stand firm on his principles.

Smythe's perseverance surfaced again the day after the report to the King was drafted. Presented with a new piece of evidence which he deemed important, he smugly passed it on to his fellow commissioners:

I desire the enclosed, may be inserted in the journal of our proceedings. I am sorry it is not in my power to meet you, this morning. As this minute contains only the plain facts, I hope there will be no objection to the request of Frederick Smythe.⁷⁵

Unfortunately, he did not name the item in his letter. One can only speculate upon its content. Perhaps it was his letter from Dudley, perhaps some other bit of information which he thought might dispel the objections cited by his colleagues. The item did not appear in the journal of the proceedings.⁷⁶

The commissioner's report to the King was enclosed in a letter to Lord Dartmouth.⁷⁷ They all agreed that they had invested more time in the

⁷⁵ Frederick Smythe to the Commissioners, Newport, 23 June, 1773, Gaspee Papers, Rhode Island State Archives, Bartlett, *Records*, VII, 177, Staples, *Documentary History*, p. 48, University microfilms, American Culture Series, University of Michigan.

⁷⁶ Although the proceedings did not take note of his communication to the other commissioners, Smythe's motion would have great impact in the final report to the King.

⁷⁷ Commissioners to Lord Dartmouth, 22 June, 1773, Gaspee Papers, Rhode Island State Archives. Bartlett, *Records*, VII, 177-78. Staples, *Documentary History*, pp. 151-52, University microfilms, American Culture Series, University of Michigan.

inquiry than their own personal fortunes would sustain. Time and money were two reasons they cited in their decision to close their investigation. Another was the inference that their efforts had yielded all the information that there was.

The commissioners assiduously attempted to answer all of the questions which the Crown had put to them in their instructions. Where precisely, was the crime committed? The commission and instructions placed the *Gaspee* at Newport at the time of the attack. The report rectified this error; the vessel was destroyed some twenty-three miles from Newport, in the township of Warwick, in the county of Kent, about six miles from Providence. Was the attack premeditated, and was it conducted in a public manner? According to the statements of notable people from Providence (the commissioners probably had the deputy governor and the three attorneys in mind), there was nothing public about the activity of the attackers. Nor was there any proof to support the charge that the attack was anything other than a spontaneous occurrence, precipitated by the *Gaspee's* running aground which they designated as an "unforeseen event. ..." ⁷⁸

Exactly what took place? At about 1:00 a.m. on the morning of June 10, several men of relatively high station, assisted by a number of other

⁷⁸ The Report of the Commissioners to the King, Newport, Rhode Island, 22 June, 1773, Bartlett, *Records*, VII, 179.

people, several of whom were black, boarded the *Gaspee*, wounded the commander, attacked the crew, evacuated them on shore with their commander, and set the torch to the schooner.

The efforts of the civil magistrates to discover the participants was a special concern for the Crown. The commissioners could report that the colony's leaders had behaved admirably throughout. Although the earlier efforts to obtain information from townspeople in Providence were not successful, Sessions conducted a diligent inquiry by examining several *Gaspee* crew members. Gathering evidence was not his only concern. He made arrangements for the crew's safe conduct to the *Beaver*, and for the disposition of stores salvaged from the wreckage of the *Gaspee*. Nor had he ignored Dudingston's personal comfort while the latter was confined at Pawtuxet.

The commissioners' evaluation of Governor Wanton's role was equally complimentary. Upon learning what had occurred, he issued a proclamation with a reward for the discovery of the participants. His later attempt to secure custody of Aaron Briggs for the purposes of interrogation, proved ineffectual, and concluded his efforts to find the perpetrators of the crime.⁷⁹

The conduct of Darius Sessions and Joseph Wanton was somewhat easier to defend than the behavior of the justices of the superior court. The commissioners explained that after the grand jury was empanelled in October,

⁷⁹ *Ibid.*

1772, they were summarily dismissed with no charge to examine the *Gaspee* incident. Because Chief Justice Hopkins was out of town and unable to preside, the attorney general did not wish to bring the matter to the attention of the court. The report did not allude to the fact that no charge was ever made, even after the Chief Justice returned, or that the presiding justice (James Helme) claimed that he had forgotten about the *Gaspee*.

Determining the causes of the *Gaspee's* ill-fortune was another responsibility which the King expected of his commissioners. Five probable causes were put forth. Some fiercely independent Rhode Island merchants smarted under the bridle of any royal economic controls. A second factor, an expanded customs service which now utilized navy officers, augmented the animosity to the commercial restrictions. Short-fused merchants fought back; a case in point was the destruction of the customhouse boat, the *Liberty*.

The *Liberty* was cited as a third cause. Because no serious attempt was ever made to apprehend the guilty persons, the unconcern of the colonial officials had encouraged others to contemplate such acts for the future.⁸⁰ As a fourth cause the commissioners accused the civil magistrates of encouraging the people to commit acts of lawlessness. For instance, Chief Justice Hopkins had been asked to give his opinion of the validity of Dudingston's authority to serve as a customs officer. He asserted that for Dudingston to go about his

⁸⁰ *Ibid.*, p. 180. That the *Liberty* was even mentioned in the report was proof of Smythe's influence on the other commissioners. Governor Wanton, for instance, would not have supported the inclusion of anything which detracted from the colony's case.

duties without having personally displayed his credentials to the Governor, made him guilty of a "trespass if not piracy."⁸¹ Such an interpretation, the report contended, might have appeared as a license from the court for some to take the law into their own hands. As a final cause the commissioners were of the opinion that Dudingston suffered from an ". . . intemperate, if not a reprehensible zeal to aid the Revenue service . . ."⁸²

Determining specifically who was involved in the burning was another of the commissioners' responsibilities. The scant evidence made the opinion of the Superior Court a foregone conclusion. Much controversy had accompanied the testimony of Aaron Briggs. While the commissioners did not think it appropriate to concur with, or take issue with the Superior Court, they did take the opportunity to offer their own judgment of Briggs' credibility. They did not outrightly discount his deposition as false, although some circumstances surrounding it created doubts for them. Captain Linzee's use of intimidation to wrest dubious facts from Briggs, whom they called a person of questionable character, was one reason; another was the deposition itself which they said was fraught with half-truths and contradictions. How, they asked, could Briggs have had time to participate in the crime, and return home unnoticed before sunrise, when Namquit Point was a considerable distance from Prudence Island where he lived?⁸³

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ Prudence Island is some six miles from Namquit (Gaspee) Point. Such a trek in a small boat might have been highly difficult as the commission report suggests.

The importance which the Crown had given to Briggs' story did not permit it to be quietly forgotten. Frederick Smythe and Daniel Horsmanden probably discussed it at length on their voyages together to and from Newport. Much as both men would have liked to believe Briggs, they found it impossible. Smythe said that ". . . the credibility of his testimony is exceedingly questionable in every article, and upon the whole I cannot help thinking that our enquiry is rather disgraced than aided by his information. . . ." ⁸⁴

Like Smythe, Horsmanden was inclined to disbelief also but he demanded more convincing proofs than his colleague from New Jersey. He had made the statement that Briggs' testimony could probably be successfully impugned by his master "a person of undoubted Credit. . . ." ⁸⁵ Nonetheless, Horsmanden was amenable to hearing both sides. He wanted to ". . . bring the witnesses face to face, considering the Commission required, we should report all the circumstances attending the affair." ⁸⁶

⁸⁴ Frederick Smythe to the Earl of Dartmouth, 8 February, 1773, F. W. Ricord and W. Nelson, eds., *New Jersey Documents*, First Series, X, 398.

⁸⁵ Daniel Horsmanden to Lord Dartmouth, 20 February, 1773, Edmund B. O'Callaghan, ed., *Documents Relating to the Colonial History of the State of New York* (Albany: Weed Parsons & Co., 1856-1883), VIII, 352. Like Stiles' comments upon the Briggs testimony, Horsmanden's also betray a prejudice toward Briggs. The word of Mr. Tompkins, the white master, was accepted by the commissioners, who did not even request an interview with him. There is the possibility that Briggs' statement was discredited for the same reasons, *i.e.*, because he was black and indentured. His testimony was not so garbled as the commissioners would lead one to believe.

⁸⁶ *Ibid.*

Therefore it was surely a serendipitous occasion for Horsmanden, when some time after the commissioners had returned home, he found himself detained at Newport while awaiting a favorable wind and weather to New York. As the result of a conversation he had had with a navy captain in Newport who professed to know a great deal about Aaron Briggs and his confinement aboard the *Beaver*, Horsmanden's doubts were entirely removed.⁸⁷

The navy captain explained that Samuel Tompkins, Briggs' master, along with Somerset and Jack, two fellow servants, went on board the navy vessel to speak with the captain in Briggs' presence. The master and servants denied Briggs' story. While Briggs "prevaricated much . . ." ⁸⁸, he still stood his ground.

After ushering Tompkins and the two servants from the vessel, the captain accused the black man of being a fraud and commanded him to tell the truth. Before long ". . . he confessed twas all a fiction . . ." ⁸⁹, an admission he hoped would spare him the punishment which he knew awaited him. Nonetheless Linzee and some of the *Beaver's* crewmen were convinced of his culpability. Briggs' compulsion to admit to something which he had not done resulted from the apparent surety of his accusers that he was indeed one of

⁸⁷ Daniel Horsmanden to the Earl of Dartmouth. 23 July, 1773, Edmund B. O'Callaghan, ed., *New York Documents*, VIII, 390. Horsmanden was probably referring to Captain James Ayscough of the *Swan*. Briggs was detained on this vessel for a time.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

the people involved.

Horsmanden was finally satisfied. But before the ministry had the occasion to share this intelligence from the New York justice, Dartmouth took the initiative in demanding more information regarding Briggs' testimony:

It is His Majesty's Pleasure that you do transmit to me, with all convenient dispatch, an authentic copy of the minutes of your proceedings on the enquiry, together with copies of the examinations of Aaron Briggs, Patrick Earls, Peter May & William Dickinson; and of the depositions of Samuel Thompkins, Saml Thurston, and of Sommerset and Jack the indented Servants; which examinations & depositions are referred to in the report made to you by the justices of the Superior Court of Judicature and Court of Assize in the Colony of Rhode Island.⁹⁰

The depositions were not dispatched to England until April, 1774, almost a year after the report to the King had been drafted, and nearly two years after the *Gaspee* had been burned. The Governor gave reasons for the delay: along with the dispatches Dartmouth had asked for an estimated account of expenses of each of the commissioners while at Newport. The Governor explained that the amount of time needed to collect these accounts, necessitated by the long distance of the other commissioners from Newport, detained him from forwarding all the material sooner.⁹¹ Perhaps Dartmouth welcomed the delay. He had stated earlier that

⁹⁰ Lord Dartmouth to the Commissioners of Inquiry at Rhode Island, Whitehall, 17 August, 1773, Colonial Office, 5:1285, folio 401-04, Edwards, Gaspee Papers, Rhode Island Historical Society.

⁹¹ Joseph Wanton to Lord Dartmouth, Rhode Island, 15 April, 1774, Colonial Office, 5:1285, folio. 433-36, Edwards, Gaspee Papers, Rhode Island Historical Society.

should any indictments be handed down in Rhode Island, he would not permit the transportation of persons to England for their trials.⁹² William Gordon, the eighteenth century historian, congratulated the Secretary on his good fortune, which meant that he would not be placed in the precarious position of having to challenge the clause in the commission providing for overseas trials.⁹³

With such a friend as Lord Dartmouth in the State department, Rhode Islanders had little in reality to fear. Even the commissioners continually professed their commitment to an impartial investigation which, they said, did not include handing down indictments on their own initiative. As Chief Justice Oliver remarked, the men who presided at the inquiry shared a common reverence for the law and viewed themselves as judicious, sober, and impartial investigators, rather than as agents of a vindictive ministry. The presence on the commission of men skilled in the law had to be infinitely preferable to personnel from the navy and army serving as commissioners. Stiles concurred with Oliver:

But had this Commission been in the hands of Adm. Montague and a few Tars, they might have only applied to some single bought up Justice of Peace, privately got a Warrant, called Troops from N. York, and traversed Providence and Warwick, & seized such persons as a Negro or a Dudingston might accuse, and whip him aboard ship and so to England for trial.⁹⁴

⁹² B. D. Bargar, Lord Dartmouth and the American Revolution (Columbia, S.C.: The University of South Carolina Press, 1965), p. 81.

⁹³ *Ibid.*

⁹⁴ Dexter, *Stiles Diary*, I, 284.

Admiral Montagu's role in the transactions was minimal. Despite his promises in late May to come to Newport in June, he never arrived. It seemed doubtful that he really intended to, because the purpose of having Commodore Keeler assume his duties at Newport was to avoid the inconvenience of his having to take such an extended leave from Boston. Commodore Keeler's involvement in the commission was insignificant also, largely by his own choice. He feared arrest and had prudently avoided putting foot on shore.

The commissioners themselves gave almost no cause for alarm, save their presence. Civil order in Newport did not necessitate a call for troops either in January or June. But had there been some public clamor or disorder, the commissioners' probably would have avoided the use of troops. When eventually given another opportunity to exert their authority, they shied away from the challenge; either out of principle or fear, they stoutheartedly refused the invitation of the Superior Court to review the opinion of the evidence. In fact, their most faithful spectator, the Reverend Mr. Stiles, remarked that the commissioners had ". . . done so very little, and [had] finished with so much Stillness, that we scarcely know what they have done."⁹⁵ So inglorious was their departure that they did not even find time to mention in the journal of their proceedings that they were closing their investigation.

In spite of the many circumstances which should have allayed the

⁹⁵ *Ibid.*, p. 391.

apprehension of Rhode Islanders, misgivings persisted. Stiles probably received more reassurances from Peter Oliver than had anyone else, save those who held positions in the colony's government. Yet Stiles remained in the end unconvinced of the commission's integrity. He attributed the innocuous conclusion of the inquiry to orders from the ministry that the commissioners not press their responsibilities with too much zeal. This was speculation on Stiles' part. But he did seem closer to the truth when he suggested that the commission had ". . . given an extensive Alarm to all the Assemblies upon the Continent . . ." ⁹⁶ The convening of the commission of inquiry in January, 1773, had undeniably terminated the period of quiescence which had distinguished the brief span of time between the Boston Massacre and the burning of the *Gaspee*. ⁹⁷

⁹⁶ *Ibid.*, p. 384.

⁹⁷ Eugene Wulsin has explored this idea in his article in two parts, "The Political Consequences of the Burning of the *Gaspee*," *Rhode Island History*, III, No. 1 and 2 (January and April, 1944), 1-11 and 55-64.

CHAPTER X

THE IMPACT OF THE *GASPEE* AFFAIR ON THE COMING OF THE REVOLUTION

In his ground-breaking study, *The Ideological Origins of the American Revolution*, Bernard Bailyn sets forth an interpretation of the Revolution which illuminates the reasons for the prodigious repercussions which the *Gaspee* Affair created, not only in America but also in England. He maintains that a study of the pamphlets of the revolutionary era reveals that *slavery*, *corruption*, and *conspiracy* were most frequently discussed among those Americans who were disgruntled with parliamentary measures, and among friends and members of Government who abhorred growing American dissidence. He writes:

The more I read, the less useful, it seemed to me, was the whole idea of propaganda in its modern meaning when applied to the writings of the American Revolution, . . . In the end I was convinced that the fear of a comprehensive conspiracy against liberty throughout the English-speaking world--a conspiracy believed to have been nourished in corruption, and of which, it was felt, oppression in America was only the most immediately visible part--lay at the heart of the Revolutionary movement.¹

Colonials found a number of apparent truths to support what they viewed as conspiracy by corrupt ministers in England—ministers whose

Bernard Bailyn, *The Ideological Origins*, ix.

objective it was to undermine republican principles of government in America, thus reducing colonials to a state of slavery. Bailyn states, "It is the meaning imparted to the events after 1763 by this integrated group of attitudes and ideas that lies behind the colonists' rebellion."² Colonials verified their suspicions with several proofs: the Stamp Act, which threatened the individual's control over his property; the presence of officials in the colonies who misled the ministry with false impressions concerning colonial affairs; the Townshend duties which, in addition to levying taxes for revenue, strengthened the power of the customs service in North America, a trend, thought colonials, which had begun under the Sugar Act in 1763 when the crown first employed additional customs personnel.³

To many Americans perceiving the situation, evidences of a developing pattern of conspiracy were visible as early as 1759 when the crown had attempted to interfere with the colonial judicial system. When Pennsylvanians granted their judges life tenure, the act "... was disallowed forthwith by the crown."⁴ To many it appeared as though this was a deliberate attempt to meddle with judicial tenure, making it dependent upon "the will of the crown."⁵ Another attack upon the colonial judicial system was seen in the extension of

² *Ibid.*, p. 94.

³ *Ibid.*, pp. 98, 102, 103.

⁴ *Ibid.*, p. 105.

⁵ *Ibid.*, p. 106.

the powers of the vice-admiralty courts in the colonies, whereby one judge, acting in the absence of a jury, could hear and determine the facts.⁶

Other instances of apparent ministerial interference in colonial affairs added substance to the belief that corrupt ministers were bent upon the destruction of American liberty. Plural office holding permitted particular families, such as the Hutchinsons of Massachusetts, to monopolize all branches of government.⁷ The deployment of troops to Boston in 1768 was another proof. To colonials the Boston Massacre ". . . was the logical work of a standing army. . . ." ⁸ The attempts by the ministry to obstruct the seating of John Willkes in Parliament, and the ensuing riot at St. George's Fields in which several supporters were killed when fired upon by British soldiers--these too were given sinister meaning by Americans who were suspicious of the ministry's policy objectives, those who claimed they were witnessing a deliberate and methodical process to undermine republican government in America.

According to Bailyn, friends of Government, and Government itself, also subscribed to the belief that a conspiracy was afoot:

⁶ *Ibid.*, p. 108.

⁷ *Ibid.*, p. 109.

⁸ *Ibid.*, pp. 113, 116.

The opponents of the Revolution--the administration itself--were as convinced as were the leaders of the Revolutionary movement that they were themselves the victims of conspiratorial designs. Officials in the colonies, and their superiors in England, were persuaded as the crisis deepened that they were confronted by an active conspiracy of intriguing men whose professions masked their true intentions.⁹

Both sides, colonials and British officials in America and England, weighed the actions of the other with suspicion. Doubting Americans thought that they had isolated a British design to subvert American liberty; the ministry was convinced that a radical elite in the colonies was determined to subvert royal authority throughout America. Each believed that the other was motivated by an excessive and crass appetite for power.

Did the ministry look upon the *Gaspee* burning as a conspiracy intended to weaken royal authority in Rhode Island? It is true that the burning of the *Gaspee* had a greater impact in England than it had had in America. Few Americans were even moved to condemn this assault against a royal vessel. Colonial violence, either against British personnel or British vessels, was a frequent occurrence in the colonies. In Rhode Island alone, three Government vessels had been assailed, the *St. John*, in 1764, the *Liberty*, in 1769, and the *Gaspee* in 1772. Several people had been attacked by colonial mobs, among them Collector Charles Dudley, and numerous tidewaiters, pilots and navy captains, particularly William Reid of the *Liberty* and William Dudingston of the *Gaspee*. The burning of Dudingston's craft did not create any great sense of outrage and shock among Americans. Those who were most indignant were surely people who placed a high premium on royal authority.

⁹ *Ibid.*, p. 151.

Collector Charles Dudley was one. Referring to the incident as "this dark Affair," he believed strongly that the burning had sinister implications and that the decision to destroy the vessel had been settled several weeks before the attack. He admitted as much to Admiral Montagu:

I shall first of all premise that the Attack upon the Gaspee was not the Effect of Sudden Passion and Resentment, but of cool deliberation and forethought: the local Circumstances at the Time she was burnt did not raise the first Emotion to that enormous Act; it had been long determined she should be destroy'd.¹⁰

Dudley's premise became Montagu's food for thought. After contemplating briefly, the Admiral passed along Dudley's supposition to the ministry. Such attitudes served to establish, if not corroborate Government's suspicions that Rhode Islanders had taken deliberate steps to undermine the authority of the crown in their colony.

It was apparent that crown supporters such as Dudley, attached great significance to the manner in which Providence residents had been assembled prior to the burning. One anonymous observer (his account bears strong resemblance to other Dudley letters) wrote:

Some measures necessary to raise a sufficient Number of People to engage in this wicked attempt--a Drum was beat Thro' the town with an avowed intention of making all Persons acquainted with it, that all Persons might join in the Common Cause; and many Persons were called upon and invited in a more particular Manner to engage in the design.¹¹

¹⁰ Charles Dudley to Rear Admiral Montagu, Rhode Island, 23 July, 1772, enclosure in J Montagu to Philip Sevens, Boston, 2 September, 1772, Public Record Office 1:484, Admirals Dispatches, Library of Congress transcript.

¹¹ [Anonymous] Account of Events Pertaining to Destruction of Schooner Gaspee, n.p., c. 1772, John Hay Library, Brown University. Dudley was arguing a case for "conspiracy to levy war." The anonymous writer was arguing for "constructive levying of war." For a discussion of both types of treason see James Willard Hurst, *The Law of Treason in the United States: Collected Essays*, "Treason Down to the Constitution" (Westport, Conn.: Greenwood Publishing Corporation, 1971).

He clearly viewed the attack upon the *Gaspee* as a general uprising in which all Rhode Islanders, with drums beating and banners flying, had risen up in a violent challenge to royal authority.¹² But the Reverend Mr. Stiles found the theory overstated. "I am well assured," he wrote, "notwithstanding the exaggerated Accounts about beating up for volunteers in the Streets of Providence, the Thing was conducted with . . . Secrecy and Caution. . . ." ¹³ Stiles did not consider the attack as treason, or as an open revolt, a concerted rebellion in which the entire population of Rhode Island had levied war against the King.

The ministry's American informers had nurtured the impression that the attack was an open, armed conflict by the people of Rhode Island against one of the King's royal vessels. Among the erroneous data supplied to the ministry was the idea that some ". . . two hundred armed men in eight boats . . ." participated in the attack which ". . . killed the Lieutenant." ¹⁴ According to Thomas Hutchinson ". . . it was supposed [that Dudingston was]

¹² Hurst, *Treason*, p. 77.

¹³ Ezra Stiles to Rev. Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Franklin Bowditch Dexter, ed., *The Literary Diary of Ezra Stiles* (New York: Charles Scribners. 1901), I, 350.

¹⁴ *Newport Mercury*, 28 September, 1772.

mortally wounded. ..." ¹⁵ Dudingston had not died; the participants numbered close to sixty or seventy, rather than two hundred.

Rhode Islanders resented the casual way in which the facts were "colored." They resented the construction which their act of protest had been given by the King's American informers. The *Providence Gazette* captured the mood:

We further learn, that the Affair of burning the Gaspee Schooner, having been greatly exaggerated and misrepresented, the Ministry were highly incensed on the Occasion: but that on the Arrival of Capt. Sheldon, from this Port, with Dispatches from his Honor the Governor, containing a true Representation of Facts, the Clamour against the Colony has abated, and was almost entirely subsided when the last Accounts came away. ¹⁶

Despite the Governor's attempt to supply the ministry with the colony's version of the incident, Government officials continued to adhere to the belief that some conspiratorial design surfaced in Rhode Island on the evening of June 9, 1772. For instance, the opinion of the Attorney and Solicitor General designated the burning an act of treason, that is, levying war against the king. At the distance of three thousand miles and heavily dependent upon second-hand accounts for their information, the ministry concluded that the attack was treason.

The extent of misrepresentation of facts was illustrated by two stories

¹⁵ Thomas Hutchinson, *The History of the Colony and Province of Massachusetts Bay*, Lawrence Shaw Mayo, ed. (Cambridge, Mass.: Harvard University Press, 1936), III, 262 n.

¹⁶ *Providence Gazette*, 26 September, 1772. *Massachusetts Gazette and Boston News Letter*, supplement, 18 October, 1772.

which appeared in the Rhode Island papers during the spring of 1773. A reprint from a London paper suggested that the commissioners had been rudely received by the local residents: "It is rumored about town [London], that Admiral Montagu, and the other Commissioners, who went with him on the expedition to Rhode Island, had been tarred and feathered there, and were returned over land to Boston in a very woeful condition."¹⁷

The other story referred to an incident in Boston which lent itself to comparison with the *Gaspee* Affair. A storeship which caught fire in Boston harbor ". . . burnt almost to the Water's Edge." No one had come to the assistance of the vessel because of the fear that large amounts of powder on board would ignite at any minute. The explosion never occurred. However, one comment in a Boston newspaper referred pointedly to the problem of misrepresentation of facts:

It is however somewhat lucky for the Town that the Fire broke out in the Day Time, and when only the People belonging to the Ship were on board, otherwise it might have been Matter of Representation to the Board of Admiralty at Home to have immediately fitted out a Fleet in order to apprehend certain Persons, to be sent beyond the Seas to be tried, as in the Case of the *Gaspee* schooner at Rhode-Island.¹⁸

Admiral Montagu concurred that the fire was unintentional. But the reaction in England was different. Londoners were informed that the vessel was

¹⁷ *Providence Gazette*, 8 May, 1773.

¹⁸ *Newport Mercury*, 7 June, 1773.

"... set on fire by some of the inhabitants of this metropolis [Boston], a great number of whom were taken up and committed to gaol --*It is probable, there has been more Letter-Writing.*"¹⁹

References to the burning by former Secretary of State, Lord Hillsborough, and his successor, Lord Dartmouth, betrayed the same conspiratorial attitudes which Dudley had voiced. Hillsborough observed:

The King's Servants are clearly of opinion that a Transaction of such a nature, in which so great a number of Persons was concerned, could not have happened without previous meetings concert, nor without such preparation as could not, in the nature of it, be concealed from Observation.²⁰

His implication was: If the plan were so public, why then did the colony's officials fail to forestall it? Though less suspicious than his predecessor, Lord Dartmouth noted that the crown lawyers had considered the attack an act "... of a much deeper Dye ..." than mere piracy, and he was hopeful that Governor Wanton would vigorously endeavor to discover "... the Authors & abettors of so heinous an Offence ..." ²¹

The ministry's suspicions concerning the *Gaspee* burning were evident in the end product of their deliberations, the appointment of a royal commission. Mistrust was largely responsible for the appointment of the royal investigative body. The wording of the commission also revealed the mistrust

¹⁹ *Ibid.*, 27 September, 1773.

²⁰ Lord Hillsborough to the Governor and Company of Rhode Island, Whitehall, 7 August, 1772, Colonial Office 5:1301, folio 452, Papers relating to the *Gaspee*, Compiled by Walter A. Edwards, Rhode Island Historical Society.

²¹ Right Honorable the Earl of Dartmouth to Joseph Wanton, Whitehall, 4 September, 1772, Manuscript Papers, Gaspee Commission Records, John Carter Brown Library, Brown University.

which British administrators harbored toward Rhode Island magistrates. The crown wished ". . . to be perfectly informed how so daring an attempt could be concerted, prepared and carried into execution in the chief town of our said colony, the residence of the Governor and principal magistrates thereof. ..." ²² Another error! Providence, not Newport, was the town in question.

An anonymous Rhode Islander was certain that civil magistrates had taken part in the destruction of the *Gaspee*; in his judgment "Reason and Common Sense forbid any conjecture . . ." He doubted that ". . . Sophistry or Cunning . . . [could] exculpate, or even extenuate the fault of those men whose Duty it was to preserve the Peace." ²³ In their report to the King, the commissioners took time to refute the premise originated by Dudley and embraced by the ministry. They did not find any evidence to support a secret rebellion:

We further beg leave humbly to represent to Your Majesty, that in the part of our duty contained under the inquiry into the assembling, arming and leading on the people to attack the *Gaspee*; also, the concerting and preparing the same, we have been particularly attentive.

But after our utmost efforts, we are not able to discover any evidence of either; and therefore, are humbly of opinion, both from the unforeseen event of the *Gaspee*'s running on shore, the suddenness of the undertaking and its accomplishments, and total want of evidence of even an intention to destroy her, though many witnesses of credit, as well inhabitants of Providence as other places, were strictly examined on this head, that the whole was conducted suddenly and secretly. ²⁴

²² "Royal Commission to the Commissioners of Inquiry, relative to the Destruction of the *Gaspee*," John R. Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations in New England* (Providence: 1857), VII. 109.

²³ [Anonymous] Account of Events Pertaining to Destruction of schooner *Gaspee*, n.p., c. 1772. John Hay Library, Brown University.

²⁴ "Report of the Commissioners to the King," 22 June, 1773, Rhode Island State Archives. Bartlett, *Records*, VII, 179.

Nonetheless, the influence of Dudley's ideas upon the thinking of the ministry was obvious.

In December, 1772, before the commission of inquiry had convened its first session, Rhode Islanders were confronted with a monumental problem which appeared to defy solution. What was the best course of action to take toward the commission? Despite a letter from Lord Dartmouth to the Governor of Rhode Island in which the Secretary set forth the intentions of the crown, and the powers of the newly appointed commission, Rhode Islanders found the commission and the ministry's intent ambiguous.

At face value the commission of inquiry seemed threatening beyond belief. Rhode Islanders' fears were compounded by the circulation of earlier rumors that the commission was a court of over and terminer. Such a commission, appointed by a vindictive and sinister ministry, appeared to endanger the colony's rights and liberties under English law. The time had come for Rhode Island to act.

Convinced that the colony's legislature had done nothing to meet the challenge of this affront to their constitution, Nathanael Greene had despaired that the legislators

"... had lost all that Spirit of Independence and Publick Virtue that had ever distinguished them since their first being incorporated . . ." ²⁵ His recrimination was neither totally accurate nor justified. The truth was that the Assembly had indeed acted swiftly. After Lord Dartmouth's letter was presented to the General Assembly by the Governor, it was copied by the Assembly's secretary, Henry Ward, who intended it for further distribution outside of the colony. An ad hoc committee composed of Deputy Governor Sessions, house speaker Stephen Hopkins, and some others, then sent the Dartmouth letter to Samuel Adams in December, 1772, explaining the reasons for their action.

The committee believed that the dangers which the commission of inquiry had set loose would "... affect in the tenderest point the liberties, lives, and properties of all America . . ." ²⁶ Implying that their liberties were threatened by a plotting group bent upon their enslavement, the Rhode Island lawmakers appealed earnestly to Adams for assistance. They asked him to "... consider how natural it is for those who are oppressed, and in the greatest danger of being totally crushed, to look around every way for assistance and advice." ²⁷ In their efforts to alert prominent citizens of other colonies who could best assist them, they had also sent a copy of the

²⁵ Nathanael Greene to Samuel Ward, Coventry, 25 January, 1773, Clifford P. Monohon and Clarkson A. Collins, 3rd, "Nathanael Greene's letters to 'Friend Sammy' Ward," *Rhode Island History*, XVI, No. 3 (July, 1957), 85.

²⁶ Darius Sessions to Samuel Adams (excerpt), 25 December, 1772, William V. Wells, *The Life and Public Services of Samuel Adams* (Boston: Little, Brown and Co., 1865), II, 14.

²⁷ *Ibid.*

Dartmouth letter to John Dickinson of Pennsylvania asking for his advice.

In choosing to capitalize upon their problem by sharing the Dartmouth letter with other colonials, the members of the legislature had broadened the commission's initial impact upon American politics. When Samuel Adams released the committee letter and the Dartmouth letter to the press, the commission's exposure became even greater still, soon achieving continental renown. So far-reaching were the constitutional and political implications of the commission that they were destined to find their way to the continental political forum with or without the aid of the General Assembly members or Adams, yet both had undeniably nudged along events by their actions.

Samuel Adams perceived what he thought was a diabolical design in the Government's new commission of inquiry for Rhode Island. He recognized that the commission as a political issue had the capacity for arousing universal colonial interest:

The Colonies are all embarkd in the same bottom. The Liberties of all are alike invaded by the same haughty Power: The Conspirators against their common Rights have indeed exerted their brutal Force, or applied their insidious arts, differently in the several Colonies, as they thought would best serve their Purpose of Oppression and Tyranny.²⁸

Utilized properly the commission as an issue could yield political as well as constitutional rewards. It might be the one event which would prove England's

² Samuel Adams to Richard Henry Lee, Boston, 10 April, 1773, Harry A. Cushing, ed., *The Writings of Samuel Adams* (New York: G. P. Putnam's Sons, 1906). III, 28.

undoing; the one event which would shake the colonies from their lethargy. Adams' thoughts turned once again to an inter-colonial network of corresponding committees.

For several years he had sung the praises of colonial cooperation through ad hoc committees of correspondence within the colonial legislatures. Although other colonies had not responded to Adams' appeal, Massachusetts had proceeded unilaterally, establishing town committees throughout the province. But it was Virginia, not Massachusetts, which first responded to the threat to American liberties posed by the commission. When the policy of overseas trials was first broached in 1768, many Burgesses were compelled to voice their concern. Now, reports of the commission, received from Adams and the various New England newspapers, triggered another debate in March, 1773. Older members of the House, who appeared less inclined toward vigorous protest, soon found the initiative taken from them by more vigorous and youthful members such as Thomas Jefferson, Patrick Henry, Richard Henry Lee, Francis L. Lee and Dabney Carr.²⁹ In private these men explored alternative courses of action. Their central objective was the coalescence of continental opposition to the commission. Jefferson wrote:

²⁹ Thomas Jefferson, *Autobiography, 1743-1790, The Works of Thomas Jefferson*, edited by Paul Leicester Ford (New York: G. P. Putnam's Sons, 1904). I, 9.

We were all sensible that the most urgent of all measures was that of coming to an understanding with all the other colonies to consider the British claims as a common cause to all, & to produce a unity of action: and for this purpose that a commee [*sic*] of correspondence in each colony would be the best instrument for intercommunication: and that their first measure would probably be to propose a meeting of deputies from every colony at some central place, who should be charged with the direction of the measures which should be taken by all.³⁰

A resolution calling for the formation of committees of correspondence sponsored by Dabney Carr was adopted a few days later on March 12. The preamble called attention to the prevalence of "various Rumours and Reports" regarding the commission at Newport and the fears which it had generated in Virginia.³¹ In an attempt to ". . . remove the Uneasiness, and to quiet the minds of the People ..." and to protect the rights of Englishmen, eleven Burgesses were appointed to a committee of correspondence and inquiry.³²

The resolutions called for speedy execution of three proposals. First the committee would initiate a general correspondence with all the colonies to secure information concerning acts of the ". . . *British Parliament*, or proceedings of Administration, as may relate to or affect the British Colonies in America. . . ." ³³ Secondly a particular inquiry into the commission at Rhode Island was ordered. Finally the resolutions would be

³⁰ *Ibid.*, p. 10.

³¹ John P. Kennedy, ed., *Journal of the House of Burgesses of Virginia, 1773-1776, Including Records of the Committee of Correspondence* (Richmond, Va.: no publisher, 1905), p. 28.

³² *Ibid.*

³³ *Ibid.*

transmitted to the other legislatures, hopefully inspiring them to form their own committees.³⁴

Although Governor Dunmore (John Murray, Lord Dunmore) had dissolved the House after the passage of the resolutions, the committee met privately, drafted a circular letter with the resolutions enclosed, and forwarded them to several other legislatures.³⁵ The Virginia committee established a communication link with London as well. It selected as its correspondent John Norton, a Virginian living in London, who was amenable to the committee's objectives. Still operating under the false impression that the commission's authority was based on an act of Parliament, the committee asked Norton to procure for them a copy of the Dockyards Act.³⁶

The formation of the Virginia committee of correspondence signified the seriousness with which the House of Burgesses viewed the commission of inquiry. Although the preamble to their resolutions was subtle, cautious and prudently worded, Richard Henry Lee explained the reasons for the House's circumspection. He did not wish Virginia's resolutions to be misrepresented to the ministry:

³⁴ *Ibid.*

³⁵ Paul Leicester Ford, *Jefferson Works*, I, 10.

³⁶ Committee of Correspondence to John Norton, Virginia, 6 April, 1773, Kennedy, ed., *Journal of Burgesses, 1773-1776*, p. 42. Benjamin Labaree, *The Boston Tea Party* (New York: Oxford University Press; 1964), p. 170.

... our language is so contrived as to prevent the Enemies of America from hurrying this transaction into that vortex of treason, whither they have carried every honest attempt to defend ourselves from their tyrannous designs for destroying our constitutional liberty.³⁷

Samuel Adams was greatly pleased with Virginia's actions, as much so as he was displeased with Rhode Island's restraint. "I wish the Assembly of that little Colony," he wrote, "had acted with more firmness than they have done . . ." ³⁸ Adams came down harshly on the Assembly. After all it was Rhode Island, not Virginia, which witnessed the commission in its midst, and it was Rhode Island which was threatened with troops in the wake of any civil disobedience or opposition to the commission.

Adams had spoken too soon. Outflanked by Virginia, the Rhode Island General Assembly was determined to win the second place of honor. They voted resolutions establishing a committee of correspondence on May 7. Heading it was Stephen Hopkins, assisted by Moses Brown, John Cole, William Bradford, Henry Marchant, and Henry Ward.³⁹ A few days later Speaker of the House, Metcalf Bowler, notified the Virginia committee of Rhode Island's action.⁴⁰

³⁷ Richard Henry Lee to John Dickinson, Chantilly in Virginia, 4 April, 1773, James Curtis Ballough, ed., *The Letters of Richard Henry Lee* (New York: Macmillan Co., 1911), I, 83.

³⁸ Samuel Adams to Richard Henry Lee, Boston, 10 April, 1773, Cushing, *Writings of Samuel Adams*, III, 27-28.

³⁹ *Newport Mercury*, 10 May, 1773.

⁴⁰ Metcalf Bowler to Committee of Correspondence in Virginia, Rhode Island, 15 May, 1773, Kennedy, *Journal of Burgesses, 1773-1776*, p. 48.

Other New England colonies soon responded to Rhode Island's lead. Connecticut acted on May 21. According to Ebenezer Stillman, the speaker of the Connecticut House of Representatives, that body "... readily ... approved of [and] cheerfully adopted the Measures proposed to them ... " ⁴¹ On May 27 New Hampshire's Assembly unanimously appointed a committee of seven. ⁴² On the same day Massachusetts Bay, which had been so enthusiastic in the past, responded. ⁴³ Speaker Thomas Cushing, representing the views of the General Court, spoke openly of what he thought to be a persistent war against ancient rights, waged by Parliament and members of Administration:

⁴¹ Ebenezer Stillman to Speaker of the House of Burgesses in Virginia, Fairfield in Connecticut. 24 June, 1773, Kennedy, *Journal of Burgesses, 1773-1776*, p. 52.

⁴² John Wentworth to the Virginia Committee of Correspondence, Portsmouth, New Hampshire, 27 May, 1773, Kennedy, *Journal of Burgesses, 1773-1776*, p. 49.

⁴³ Thomas Cushing to Virginia Committee of Correspondence, Province of Massachusetts Bay, 3 June, 1773, Kennedy, *Journal of Burgesses, 1773-1776*, p. 50.

That there has been long a settled Plan to subvert the Political Constitutions of these Colonies and to introduce arbitrary power, cannot in the opinion of this House admit of Doubt.

Those who have aimed to enslave us, like a Band of brothers, have ever been united in their Councils and their Conduc., To this they owe their Seccess. Are they not in this Regard worthy Imitation? Here it is praise worthy to be instructed even by an Enemy.

The Object of the Conspirators against our Rights seem of late to have had much in View, has been either to lull the Colonies into a State of Profound Sleep and Security, which is forever the Forerunner of Slavery; or to foment Divisions among them. How necessary then, how important is it to counteract and defeat them in this fatal Design? To awaken and fix the Attention of all to the Common Danger--to open & maintain an uninterrupted Intercourse among the Colonies, that all may be fully appraised of the true State and Circumstances of each, and that the Councils of the whole may be united in some effectual Measures for restoring the Publik Liberty.⁴⁴

In July South Carolina augmented the strength of the movement for committees. This southern colony had not dallied from lack of interest. The Commons House of Assembly had been in adjournment when the news of Virginia's resolves reached South Carolina. Faced with prorogation by their Governor, the legislators, upon reconvening, gave immediate and unanimous approval to resolutions calling for a committee of correspondence for their colony.⁴⁵

By the autumn of 1773, four more colonies established committees. Georgia appointed a six-member committee in September.⁴⁶ Prorogation of the Maryland assembly in June delayed its finalization of resolutions until it reconvened in October. Two other colonies took action in October. Pennsylvania's delay was due to a requirement under the colony's charter,

⁴⁴ Ibid.

⁴⁵ Raw, Lowndes to Virginia Committee of Correspondence, Charles Town, So. Carolina, 9 July, 1773, Kennedy, *Journal of Burgesses, 1773-1776* p. 54. The resolutions did not cite the Dockyards Act but rather the treason statute of 35 Henry VIII. William Gilmour Simms, *The History of South Carolina from its European Discovery to its Erection into a Republic* (Charleston: Russel and Jones, 1860), p. 61. Simms mistakenly dated the resolves July, 1774, rather than 1773.

⁴⁶ William Young to Peyton Randolph, Savannah in Georgia, 20 November, 1773. The resolves were passed 10 September, 1773. Kennedy, *Journal of Burgesses, 1773-1776*, p. 60.

⁴⁷ Matthew Tilghman to Peyton Randolph, Maryland, 6 December, 1773, Kennedy, *Journal of Burgesses, 1773-1776*.

calling for dissolution of the assembly periodically. When a new assembly convened the members promptly voted for the tabled resolutions.⁴⁸ Along with Maryland and Pennsylvania the neighboring colony of Delaware also gave a positive response in October.⁴⁹

As 1773 neared its end, only three colonies had not yet joined the growing network of provincial committees. While North Carolina's House of Assembly simultaneously considered the Virginia resolves it presented Governor Josiah Martin with an address condemning his new power from the King to unilaterally appoint courts in North Carolina, a local issue which created much discontent:

We humbly conceive that the power of issuing commissions of Oyer and Terminer and general gaol delivery, delegated by his Majesty to your Excellency, cannot be legally carried into execution without the aid of the legislature of this province; and that we cannot, consistent with the justice due to our constituents, make provision for defraying the expense attending a measure we do not approve.⁵⁰

The Governor did not find the address to his liking. He prorogued the assembly on December 28, but not before the legislature had voted resolutions establishing a committee of correspondence.⁵¹ The nature of the North

⁴⁸ Joseph Galloway to Peyton Randolph, Philadelphia, 25 September, 1773, Kennedy, *Journal of Burgesses, 1773-1776*, p. 56.

⁴⁹ Caesar Rodney to Peyton Randolph, New Castle on Delaware, 25 October, 1773, Kennedy. *Journal of Burgesses, 1773-1776*, p. 58. George H. Ryder, ed., *Letters to and from Caesar Rodney, 1756-1784* (Philadelphia: University of Pennsylvania Press, 1933), p. 38n.

⁵⁰ *Newport Mercury*, 7 March, 1774.

⁵¹ *Ibid.* Kennedy, *Journal of Burgesses, 1773-1776*, p. 63.

Carolina debate, that is, the issue of commissions, doubtless held special interest in Rhode Island.

With the exception of New York and New Jersey, all of the continental colonies had established committees of correspondence by the end of 1773. Throughout the months after the January session of the commission, while colonial legislatures were acting to form committees, various grievances against the commission of inquiry began to surface. Even into 1774 and 1775 complaints were still aired by concerned colonials who saw in the commission a plot against American liberties, even though other events had taken preeminence over the Rhode Island affair,

What did the colonials find most objectionable about the provisions of the commission? What did the commission of inquiry appear to endanger? In a letter to the editor of the *Providence Gazette*, one writer, "W.B." cited the ". . . strange, new-fangled, and unconstitutional Court . . ." on several counts.⁵² Guarding against the establishment of precedent for commissions appointed by the King was one worry. He queried ". . . whether any Attention or Respect ought to be paid to it, which may in the least tend to shew, that this Colony, or any Members of it, submit to, or acquiesce in, the Authority of that Court."⁵³

"W.B." must have been scandalized when John Cole, a member of the

⁵² *Providence Gazette*, 24 April, 1773.

⁵³ *Ibid.*

Rhode Island Committee of Correspondence appeared as a deponent before the commission. Cole had strongly resisted appearing before them until Chief Justice Hopkins urged him to compose a courteous reply to the summons. When called again during the spring meeting Cole did testify in June, 1773.⁵⁴ His recent appointment to the committee of correspondence left him open to a minimal charge of conflict of interest, and a more serious accusation of renouncing the very principles upon which the committee stood. By appearing before the commissioners was he not granting some measure of legality to their hearings? Was he not abetting the ministry in its attempt to establish precedence for a commission of inquiry in the future?

The *Providence Gazette* editor, John Carter, resolutely proclaimed Cole's apparent treachery:

*J--n C--e (a member of the committee of correspondence, appointed by the general assembly) had, "in a very flagrant manner, shamefully violated and betrayed the faith and confidence reposed in him by his country, in yielding obedience to a mandate from the commissioners of inquiry, and answering interrogatories before them on oath, thereby fully acknowledging their jurisdiction, and endeavouring to counteract the laudable design of the house in appointing the said committee. . . ."*⁵⁵

Cole filed a libel suit against Carter, but a grand jury refused to indict him. The verdict encouraged the editor to castigate Cole once more, not only for his seeming duplicity in appearing before the commissioners, but also for

⁶⁴ Deposition of John Cole, 3 June, 1773. Gaspee Papers, Rhode Island State Archives.

⁵⁵ *Providence Gazette*, 3 July, 1773. *Newport Mercury*, 2 August, 1773.

"... this very extraordinary Attempt to destroy the Liberty of the Press. . . ." ⁵⁶

No one was more definitive upon the subject of precedence than Samuel Adams, who had reminded Rhode Islanders of their obligation to the other colonies.

You will allow me to observe [he wrote], that this is a Matter in which the whole American Continent is deeply concerned [*sic*] and a Submission of the Colony of Rhode Island to this enormous Claim of power would be a Precedent for all the rest . . . ⁵⁷

Connecticut's committee of correspondence agreed. They observed that a moral victory had been achieved by the crown in June, 1773, when the commission adjourned. For although it had "... closed without effecting anything ..." the commission had originally "... been Projected with [no] other serious view than to establish by Precedent the unconstitutional Measure."⁵⁸

On another occasion Adams had cautioned General Assembly members to offer

⁵⁶ *Providence Gazette*, 3 July, 1773.

⁵⁷ Samuel Adams to Darius Sessions, Boston, 2 January, 1773. Harry A. Cushing, ed., *The Writings of Samuel Adams* (New York: G. P. Putnam's Sons, 1906). II, 397.

⁵⁸ Ebenezer Stillman to Virginia Committee of Correspondence, Colony of Connecticut, New Haven, 4 November [1773]. Kennedy, *Journal of Burgesses, 1773-1776*, p. 59.

"... no Concessions ... which shall have the remotest tendency to fix a precedent; for if it is established, a thousand Commissioners of the like arbitrary kind may be introduced to the utter ruin of your free Constitution." ⁵⁹ In February, 1774, "A Countryman" condemned the effort by Government to establish new and arbitrary legal procedures in the colonies:

And, forever to deter us from attempting to resist, these cruel violations of all the laws of God--of nature, and of the English constitution, a court of INQUISITION hath been arbitrarily created in a free government, *for a precedent to all the rest of the colonies* [italics mine], in violation of its charter rights, and laws, with power to inquire into the behaviour of some of the inhabitants of it. . .⁶⁰

Precedent was but one of several objections. The fact that the commission was composed of royal appointees, in lieu of a jury, was also viewed as a second objection. In speaking of an Englishman's rights, "W.B." considered jury trial "... the grand Bulwark of his Liberties ... secured to him by *Magna Charta* ..." ⁶¹ Because the accused was entitled under law to two hearings by his peers, one to determine whether sufficient evidence existed for indictment and one to determine his innocence or guilt--any interference with this traditional and established legal procedure would remove the necessary "... twofold Barrier, of a Presentment and Trial by Jury, between *the Liberties of the People* and the *Prerogatives of the Crown*." ⁶² "W. B." stated that the commission of inquiry not only threatened the tradition of jury trial, it also enhanced the royal prerogative at the expense of

⁵⁹ Samuel Adams to Darius Sessions, February, 1773. Cushing, *The Writings of Samuel Adams* (New York: G. P. Putnam's Sons, 1906), II, 427.

⁶⁰ *Newport Mercury*, 7 February, 1774.

⁶¹ *Providence Gazette*, 24 April, 1773.

⁶² *Ibid.*

"... the admirable Balance of our Constitution. . . ." ⁶³ Therefore he considered increased royal prerogative as a third threat posed by the commission:

... this Power might be dangerous and destructive to our Constitution, if exerted without Check or Controul, by Justices of Oyer and Terminer, occasionally named by the Crown, who might then, as in France or Turkey [*sic*] imprison, dispatch or exile any Man, that was obnoxious to the Government, by an instant Declaration, that such is their Will and Pleasure ⁶⁴

"W.B." spoke of a fourth and final objection in his declamation to Mr. Carter of the *Gazette*. It was not sufficient that the accused merely be given a trial by jury. He was also entitled to a trial in the vicinage "... by the unanimous Suffrage of twelve of his *Equals* and *Neighbours*, indifferently chosen, and superior to all Suspicion." ⁶⁵

Colonials first became concerned with trials out of the vicinage after the colonial vice-admiralty courts were reorganized in 1763. A "supercourt" had been erected in Halifax, enjoying concurrent jurisdiction with the provincial vice-admiralty courts. Such an arrangement would permit customs officials to take causes to Halifax where they would be heard before a vice-admiralty judge who might be impartial, rather than before provincial vice-admiralty judges who were predisposed toward favoring local merchants. ⁶⁶

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Carl Ubbelohde, *The Vice-Admiralty Courts and the American Revolution* (Chapel Hill: The University of North Carolina Press, 1960), p. 49.

Distance was one of the disadvantages which colonial merchants mentioned. To many of them the port of Halifax seemed as greatly removed from their lives as was London.⁶⁷ Unfamiliarity with the region meant that merchants who were unacquainted with local lawyers there, could not avail themselves of suitable legal services. Expensive court costs was another problem created by the remote location of the Halifax "supercourt."

This objection was taken up by Massachusetts in a petition to the House of Commons. It stated that ". . . many persons, however, legally their goods may have been imported . . . [would] lose their property, merely from an inability of following after it, and making that defence which they might do if the trial had been in the Colony where the goods were seized."⁶⁸ Implicit in this grievance was the idea that such trials, removed from the vicinity where the violation had occurred, ran counter to the sacrosanct tradition of trials in the vicinage.

The colonial objections to the remoteness of the Halifax court had not gone unnoticed by the ministry. Along with the Townshend duties in 1767, four district courts had been established to replace the supercourt. Their creation did correct the problem, for colonials no longer cited distance as a significant grievance.⁶⁹ Yet in a limited sense, trials in one of the district courts

⁶⁷ *Ibid.*, p. 55.

⁶⁸ *Ibid.*, p. 61.

⁶⁹ *Ibid.*, pp. 130, 145.

still posed the same problem which trials in Halifax had. The cause might not be tried in the region where the offence had taken place.

When in March, 1772, William Dudingston carried the seized *Fortune* to the district vice-admiralty court at Boston for condemnation, bypassing the Rhode Island vice-admiralty judge, John Andrews, Rhode Islanders were in effect protesting a violation of trials in the vicinage. Thus at a time when colonials were giving great attention to the powers of the commission of inquiry at Rhode Island, allusions to the vice-admiralty courts were an understandable occurrence, for these courts were doubly offensive to Americans. They dispensed with trial by jury and they ignored the tradition of trials in the vicinage.

Opposition to trials out of the vicinage remained a vital colonial grievance, sustained by the ministry on two other occasions in 1768 and 1772. In 1768 in Massachusetts Bay, overseas trials were broached as a possible solution to insure the prosecution of malcontents in Massachusetts. The crown feared they might otherwise escape a just trial. But nothing had come of the plan. The appointment of a commission of inquiry in 1772, with the same provision for overseas trials, had indeed given the objection to trials out of the vicinage a new vitality. More than any other argument, it remained the primary objection to the commission of Inquiry.

Colonials expressed themselves freely upon this matter.

The Reverend Mr. Stiles maintained that Rhode Islanders ". . . will bear Any Thing but an actual Seizure of Persons." ⁷⁰ Rhode Island's attorney general, Henry Marchant, summarized the attendant evils of such trials:

. . . it is resolved that an American is liable upon any Accusation & carried from the Country where the Fact was committed, from a Tryal by his Peers, to a Country where he is an utter Stranger, without the Power of carrying with Him such Witnesses as might show his Innocence, or speak to his Character, and where if They could Speak, even Their Characters would not be known to be fairer or better than their Accusers —If found Guilty, as it is most probable any Man might be under such a Disadvantage--He suffers Death—If acquitted--marred is his Circumstances and his Family broke up & utterly thrown into Despair--however .flourishing his Circumstances for an American might have been—If the Man is in Trade, the very accusation with the Danger of such Consequences instantly destroy him. . . . ⁷¹

Hannah Winthrop, the wife of Harvard's President John Winthrop, viewed overseas trials as ". . . one of the most extraordinary Political Maneuvers this Century has produced . . ." ⁷² Richard Henry Lee spoke for a number of fellow Virginians when he remarked,

⁷⁰ Ezra Stiles to the Reverend Elihu Spencer, at Trenton, New jersey, Newport, 16 February, 1773. Dexter, *Stiles Diary*, I, 350.

⁷¹ Henry Marchant to David Jennings, Newport, 25 January, 1773, Henry Marchant Letter Book, Newport Historical Society. Marchant was misinformed on one point. According to Lord Dartmouth the prisoners would be sent to England along with ". . . such Witnesses on their behalf as they shall judge necessary . . ." as well as those ". . . to support the charges against them. . . ." Earl of Dartmouth to Joseph Wanton, Whitehall, 4 September, 1772, Gaspee Commission Papers, John Carter Brown Library, Brown University.

⁷² Hannah Winthrop to Mercy Warren, 4 January, 1773, "Warren-Adams Letters, Being Chiefly a correspondence among John Adams, Samuel Adams, and James Warren, Vol. I, 1743-1777," *Massachusetts Historical Society Collections* (The Massachusetts Historical Society, 1917), LXXII, 16.

"This is so unreasonable and so unconstitutional a stretch of power, that I hope it will never be permitted to take place while a spark of virtue or one manly sentiment remains In America." ⁷³

Long after the *Gaspee* burning and the commission of inquiry had ceased to be a topic of current discussion, the issue of trials out of the vicinage and beyond the seas, remained a vital force in the constitutional argument which was creating deeper divisions between Americans and the British government. In February, 1774, "A Countryman" enumerated the many grievances which Americans would lay at the feet of the ministry and Parliament: the injustices of inept customs officials; the British navy's harassment of coasting vessels engaged in nothing other than the transport of firewood from one local port to another; the firing upon passenger boats which endangered the lives of the riders; standing armies in time of peace in certain provinces. But he found most objectionable "a court of INQUISITION" to inquire into alleged offences of suspects,

and if supposed guilty, to seize and send them into a foreign country for trial; where, deprived of friends, countrymen and relations, surrounded by persons under the direction of those who have thus cruelly captivated them; they are sore [*sic*] to be unavoidably destroyed. O! My countrymen, can you bear this? ⁷⁴

In May, 1774, "Hampden" reminded his readers that precedent for royal commissions of inquiry had already been established, and that the threat of overseas trials was therefore more real than ever before:

⁷³ Richard Henry Lee to Samuel Adams, 4 February, 1773, William V. Wells, ed.. *The Life and Public Services of Samuel Adams* (Boston: Little Brown & Co., 1865), II, 65.

⁷⁴ *Newport Mercury*, 7 February, 1774.

A court of inquisition may be again appointed: The Judges may be severe, and determined to take up, and send to Europe, a number of persons, upon the slightest suspicions; and if the justices of our courts should be disposed to sacrifice the rights and privileges of their countrymen to their own private interest, or ambition; they would undoubtedly, grant warrants to apprehend any persons, pointed out by the Inquisitors; and a sheriff, from the same vile motives, might execute the detestable precepts, and the inhabitants of this colony be thus torn from their families, their friends, and their country, and hurried to a foreign realm, to certain destruction.⁷⁵

In addition to those individuals who spoke out in the public presses, the town governments of Westerly and South Kingston placed on record their opposition to the increased jurisdiction of vice-admiralty courts and to the principle of over-seas trials as set forth in the Dockyards Act. On June 10, 1774, a Connecticut newspaper printed the recently passed resolutions of the Connecticut House of Representatives, declaring unconstitutional ". . . the apprehending and carrying persons beyond the sea, to be tried for any crime alledged [*sic*] to be committed within this colony. ..." ⁷⁶ While Connecticut's resolutions made implicit reference to the Dockyards Act, South Carolina's legislature mentioned the treason statute of 35 Henry VIII c. 2, which ". . . does not extend, and cannot ..." where legal courts of law were already existent.

The First Continental Congress drafted a petition to the King

⁷⁵ *Ibid.*, postscript to issue of 2 May, 1774.

⁷⁶ *Ibid.*, 21 February and 27 June, 1774.

⁷⁷ *Ibid.*, 25 July, 1774.

recalling the imagined misdeeds of vice-admiralty judges, who, said the Congress, had utilized seizures to enhance their own salaries. The charge was unfair, since the possibility of abuse had been significantly minimized by the fixed salary which the judges received from the crown.⁷⁸ The petition also deplored a resolution of Parliament which sustained the application of 35 Henry VIII c.2 to the colonies. But mostly they condemned ". . . attempts [which] have been made to enforce that statute."⁷⁹

The following spring, 1775, the New York General Assembly drafted a petition to the King, a memorial to the House of Lords, and a representation and remonstrance to the Commons of Great Britain.⁸⁰ Their objections were also enumerated in a series of resolutions condemning specific acts of Parliament. Much of their denunciation was leveled at the vice -admiralty courts. By placing those courts on an equal footing with common law courts, such Procedures denied ". . . the subject of a Trial by Jury of the Vicinage."⁸¹ In an implied reference to the commission of inquiry at Rhode Island the resolutions condemned the Dockyards Act and the application of the treason statute of Henry VIII to the residents of Massachusetts Bay in 1768. Finally

⁷⁸ Ubbelohde, *Vice Admiralty Courts*, p. 204.

⁷⁹ *Newport Mercury*, 30 January, 1775.

⁸⁰ John Crugar Speaker to the Speaker of the Rhode Island General Assembly, New York. 10 April. 1775, Collected Letters from 1731 to 1849, III, 1763-1775. Rhode Island State Archives.

⁸¹ *Ibid.*

they set forth a defense of trials in the vicinage, a central and sacred component of English common law:

That a Trial by a Jury of the Vicinage in all Capital Cases, is the Grand Security of Freedom and the Birthright of Englishmen, and therefore that the seizing any Person or Persons residing in this Colony suspected of Treasons, misprisons of Treason, or any other Offences and sending such Person or Persons out of the same to be tried, is Dangerous to the Lives and Liberties of his Majesty's American subjects.⁸²

The issues were numerous: precedent, extension of the royal prerogative at the expense of American liberties, the replacement of a jury for royal commissioners, and overseas trials. In addition to these, the commission was condemned for still other reasons. Charging American opponents of parliamentary policies with treason was first given serious consideration in the summer of 1768, when the Massachusetts legislature issued a circular letter urging other colonies to resist recently enacted parliamentary measures. At that time the treason statute of Henry VIII was resurrected as a legal justification for transporting Americans to England to attend trial. While the attempt to prosecute Massachusetts dissidents in England never went beyond the stage of parliamentary discussion, it culminated in 1772 in the commission of inquiry.

If anyone had possessed the slightest doubt in 1768 that the crown was deadly serious when it spoke of treason charges for dissenting Americans, such misunderstandings were surely removed when the King's five commissioners arrived at Newport in January, 1773, to begin their hearings. A charge of

⁸² *Ibid.*

treason indicated to many that the crown was acting vindictively. Exceedingly dismayed by the opinion of the crown lawyers, the Reverend Mr. Stiles had commented, "No one justifies the burning of the *Gaspee*. But no one ever thought of such a Thing as being Treason."⁸³ Though he did not say, Stiles must have pondered the meaning behind this serious charge.

Henry Marchant shared Stiles' consternation. He questioned the justification for it, and laid the blame at the feet of those informers in America who supplied the ministry with its information concerning colonial affairs:

That the Gaspee is burnt is a Truth & that the Fault was committed by a set of foolhardy desperate Fellows is also a Fact--all good peaceable & quiet men wish they were not Facts. But also good men look with Abhorrence upon the Vile manner in which some of the first Characters in the Colony, certainly Men of the first Fortunes, have been trifled with, & Their Necks openly threatened with Halters, charging Them with being the Ring Leaders in perpetrating the Crime of Treason & Rebellion; and yt too upon such Evidence as would not hang a Cat.⁸⁴

Stephen Hopkins had proposed a long adjournment for the commissioners in January, 1773, so that ". . . this Injurd Colony [will have] an Opportunity of Shewing the Error & Falsehood of many Malicious Charges made against it by Admiral Montague & many other Crown Officers. . . ."⁸⁵

⁸³ Ezra Stiles to the Reverend Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 349.

⁸⁴ Henry Marchant to David Jennings, Newport, 25 January, 1773, Henry Marchant Letter Book, Newport Historical Society.

⁸⁵ Stephen Hopkins to Colonel Wanton, Providence. 20 January, 1773, American Manuscripts, John Carter Brown Library, Brown University.

The use of troops was a final grievance which was pointed to continually as the commission prepared to sit. There was precedent for the use of the military in America. Troops had been introduced into Boston in 1767. The Massacre of March 1770 was the capstone of the policy to station troops there. Despite this basis for real fear on the part of Rhode Islanders that troops might be called into their own colony, no similar situation had developed in their colony. Ezra Stiles noted, "The Commissioners soon found there was no Necessity for assembling Troops upon us, to protect their Inquiry and therefore sent for none."⁸⁶ Henry Marchant concurred that the denizens of Newport had not frustrated the commission proceedings in any disruptive manner, much to the amazement of the commissioners themselves.⁸⁷

References to the use of troops appear conspicuously absent after January, 1773. The fear that troops would be used had been greatest prior

⁸⁶ Ezra Stiles to the Reverend Elihu Spencer, at Trenton, New Jersey, Newport, 16 February, 1773, Dexter, *Stiles Diary*, I, 349.

⁸⁷ Henry Marchant to David Jennings, Newport, 25 January, 1773, Henry Marchant Letter Book, Newport Historical Society.

⁸⁸ John Shy argues that the ministry's reaction to the *Gaspee* burning ". . . was curiously weak." He says that ". . . no effective measures were taken [by the ministry] to assist them . . ." He cites Admiral Montagu's reluctance to send ". . . warships in order to support the investigation."

Actually Montagu had already dispatched warships to Rhode Island, consistent with his orders from the Lords of the Admiralty in September, 1772. When he expressed the reluctance to send vessels in March, 1773, his hesitancy was not indicative of a weakness of will on the part of the British government to use force in Rhode Island, but rather it indicated that the government thought troops would not be needed.

Rhode Islanders had not offered the least display of resistance to the efforts of the commission. It seems more reasonable to assume, therefore, that the behavior of the Rhode Islanders, rather than the lack of will of the ministry was the reason for no troops being called into Rhode Island. John Shy, *Toward Lexington: The Role of the British Army in the Coming of the American Revolution* (Princeton: Princeton University Press, 1965). pp. 401-402.

to the convening of the commission. Samuel Adams had commented that deployment of a regiment or two for Newport would cast the commissioners in a bad light, who he believed, would not be quick to risk their reputations by calling upon General Gage and his soldiers to protect them.⁸⁹ As things developed, there was no need for the commissioners to request military protection. Nonetheless provision for the detachment of military forces to Newport illustrated to colonials the malevolent intentions of the ministry.

Of all the objections which colonials enumerated in their list of grievances against the commission of inquiry—what appeared to be the central source of their protest? Why was the precedent for future commissions of inquiry so threatening? An increasing royal prerogative, the supplanting of a grand jury for a commission of inquiry, the lingering fear of trials out of the vicinage (indeed beyond the seas), the serious charge of treason, and the ministry's continuing predilection to employ troops among civilians—why were these objections offensive to Americans? What appeared to be altered or affected by the proposed or implemented changes from Whitehall? Many Americans perceived a common theme—"ministerial tyranny"

⁸⁹ Samuel Adams to Darius Sessions, 2 January, 1773, Harry Alonzo Cushing, ed., *The Writings of Samuel Adams* (New York: C. P. Putnam's Sons, 1904-1908), II, 390.

and government incursions upon American liberties and the British constitution. In writing their protest to the commissioners of inquiry in January, 1773, the three Providence attorneys had resisted the opportunity to take part in the establishment of a precedent which they believed ". . . would entail an eternal infamy on those, who ought to be acquainted with the Principles of the Constitution." "A Countryman" saw the precedent as an assault upon Rhode Island's charter rights; and too, Samuel Adams had warned that precedent once established, would be used to the detriment of other colonies and that it would terminate in the corruption of Rhode Island's "free Constitution."⁹⁰

"W.B." considered the extension of the royal prerogative an attack upon the "Liberties of the People" and ". . . destructive to our Constitution. . . ." ⁹¹ Likewise a commission of inquiry, supplanting the grand jury, was injurious to "our once happy Constitution." To others it was a violation of ". . . British Laws. . . ." ⁹² And the primary target of colonial attacks,

⁹⁰ John Cole, George Brown and Daniel Hitchcock to Honb Stephen Hopkins, Esq. East Greenwich, 19 January, 1773, copy enclosed in Stephen Hopkins to Colonel Wanton, Providence, 20 January, 1773, American Manuscripts, John Carter Brown Library, Brown University. *Newport Mercury*, 7 February, 1774. Samuel Adams to Darius Sessions, February, 1773, Harry A. Cushing, ed., *The Writings of Samuel Adams*, II, 427.

⁹¹ *Providence Gazette*, 24 April, 1773.

⁹² John Cole, George Brown and Daniel Hitchcock to Honb Stephen Hopkins, Esq. East Greenwich. 19 January, 1773, copy enclosed In Stephen Hopkins to Colonel Wanton. Providence, 20 January. 1773, American Manuscripts, John Carter Brown Library, Brown University. *Newport Mercury*, 1 February. 1773.

the continuing threat to trials in the vicinage, the fear of transportation to England for trial, was viewed as the undermining of ancient, British legal traditions. "Americanus" considered overseas trials as a danger to "our free Constitution."⁹³ The Connecticut legislature also detected an attack upon liberties:

... subjecting [persons] *to be tried by commissioners*, [italics mine] or any court constituted by act of parliament, or other ways within this colony in a summary way, without a jury, is unconstitutional and subversive of the liberties and rights of the free subjects of this colony.⁹⁴

An attack upon American liberties, an abridgement of the British Constitution? Why? What would motivate the Government to attempt such evil ends? Was the motivation unconscious or deliberate? These questions were mulled over by Richard Henry Lee of Virginia in February 1773, soon after the commission had adjourned. "The primary end of government," he wrote, "seems to be the security of life and property; but this ministerial law [commission of inquiry] would, if acquiesced in, totally defeat every idea of social security and happiness."⁹⁵

Why should the men of Whitehall want to disturb the constitutional well-being of Americans? Writing to his London friend David Jennings, Henry Marchant expressed his fears of the ministry's motive. He was particularly

⁹³ *Newport Mercury*, 21 December, 1772.

⁹⁴ *Ibid.*, 27 June, 1774.

⁹⁵ Richard Henry Lee to Samuel Adams, 4 February, 1773, Wells, *Life of Samuel Adams*, II, 65.

suspicious of the King's proclamation and reward of £1000 for anyone offering information leading to the arrest and conviction of the *Gaspee* attackers. Marchant believed that a large reward might encourage persons ". . . to give their evidence from the motive of making a Fortune by it." ⁹⁶ He envisioned public chaos as one of the insidious effects of the royal proclamation:

Would not the Old Baley furnish out Scores of Witnesses for any occasion for half the Temptation --and would not Ireland send us Thousands--Even America I am confident could furnish a horrid Number. Is not this increasing of Crime and disturbing all Peace and good order amongst Citizens? Is it not as well that some Crimes should go unpunished, as that by attempting to punish one we bring on the Persecution of many men! ⁹⁷

As many Americans cogitated the ramifications of the commission of inquiry, they arrived at the conclusion that something foul was afoot—a master plan whose roots antedated the commission by several years and whose ultimate goal was still in the process of unfolding. One Massachusetts writer refused to view the commission as a device tailored by the ministry to fit the immediate crisis in Rhode Island brought on by the destruction of the *Gaspee*. Instead "We ought to consider the measure as levelled not at Rhode Island meerly [*sic*] but as a flagrant attack upon American liberty in general." He hoped ". . . that none of us may like slaves submit to the insults of the tools of administration, but like men shew, by every constitutional method,

⁹⁶ Henry Marchant to David Jennings, Newport, 25 January, 1773, Henry Marchant Letter Book, Newport Historical Society.

⁹⁷ *Ibid.*

we intend to hold our liberties free from invasion. . . ." ⁹⁸

Samuel Adams made frequent reference to a vengeful ministry, bent upon the destruction of American liberties; and he attested to a deliberate project, a design. He thought he understood this plan as a logical explanation of the ministry's energetic attempt to establish precedent in the colonies for subsequent courts without juries. In arguing his point, he referred to the courteous reception which the commissioners had received during their winter stay in Newport. "The promoters of ministerial measures in this Town [Boston]," he wrote, "are pleased to hear from one of the Commissioners that they are treated with great respect: Even common Civility will be thus coloured [*sic*] to serve the great purpose." ⁹⁹

"W.B." urged Americans to safeguard their liberties by protecting the right to trial by jury of one's peers and neighbors, for ". . . the *Liberties* of English Subjects cannot but subsist, so long as this *Palladium* remains sacred and inviolate, not only from all open Attacks, but also from all *secret Machinations*, which may sap and undermine it." ¹⁰⁰ Harkening back to the fears raised by the revisions in the structure of the colonial vice-admiralty courts, and by the new threats offered in the commission of inquiry, "Hampden" identified what ". . . appears to be a plan concerted and established for

⁹⁸ *Newport Mercury*, 1 February, 1773.

⁹⁹ Samuel Adams to Darius Sessions, February, 1773, Cushing, *Adams Writings*, II, 427.

¹⁰⁰ *Providence Gazette*, 24 April, 1773.

enslaving us, and all our posterity . . ." The conspiracy to which he alluded was the crown's ". . . attempt to deprive us of that great bulwark of English liberty, *trials by juries in the vicinage* ... at the . . . discretion of an arbitrary minister . . . to undergo a mock trial, and inevitable execution." ¹⁰¹

"Constitution" of New York was reminded of the conspiratorial designs of royal officials when he witnessed in his colony a happening not unlike the *Gaspee* incident. The brig *Mary* had recently returned to New York from Liverpool. Having anchored in the harbor, several of her sailors took advantage of the occasion to desert and thus avoid the possibility of impressment by the officers of the *Lively Frigate*, a man-of-war stationed close by. Some of its officers and crew boarded one of the *Lively Frigate's* boats and approached the *Mary* to search for smuggled goods. "Constitution" queried if these people aspired ". . . to provoke the Inhabitants of this Province to consider them as Offenders of the same Magnitude with the Crew of the late *Gaspee* . . ." ¹⁰²

The *Mary* tried to answer a command to heave to promptly but before she could adjust her sails her crewmen ". . . were unnaturally, unjustly, and brutally fired upon . . ." nearly injuring the Captain and his mate. ¹⁰³ The

¹⁰¹ *Newport Mercury*, postscript to issue of 2 May, 1774.

¹⁰² *Ibid.*, 26 July, 1773.

¹⁰³ *Ibid.*

event shared a strong resemblance to the *Gaspee's* encounter with the *Hannah* the summer before. It sparked a lengthy harangue by "Constitution":

It must be feared by every loyal Subject, that such daring cruel and unprovoked Insults, are in Consequence of some dreadful Schemes hatched by the enemies of our King and Constitution, to throw this Country into Confusion, in order to reap Advantages, by accusing us of high Treason, when we are forced highly to resent such flagrant Breaches, not only of our invaluable Constitution, but even of the Laws of Nature.¹⁰⁴

"Constitution" did not ponder the ultimate objective of the conspirators. But "W. B." did proffer an answer. He saw the appointment of a commission of inquiry as part of a larger albeit uncompleted mosaic of British tyranny with a decidedly malicious design. He wrote that

Every new Tribunal, erected for the Decision of Facts, without the Intervention of a jury (whether composed of Commissioners of the Revenue, or any other standing Magistrate) is a step towards establishing *Aristocracy* . . . the most oppressive of absolute Governments.¹⁰⁵

This seeming misrepresentation of facts by the enemies of America came to a head in the Government's assertion that the Rhode Islanders had engaged in open and treasonous rebellion against their King. The result was a commission of inquiry. To those people who had opposed parliamentary and administration policies consistently since 1763, the commission of inquiry was simply one more attempt to deprive Americans of their constitutional birthright, under the guise of some other objective. "W. B." had warned that ". . . *new and arbitrary Methods of Trial* . . . under a variety of plausible

¹⁰⁴ *Ibid.*

¹⁰⁵ *Providence Gazette*, 24 April, 1773.

Pretences, may in Time imperceptibly undermine [trial by jury] this best Preservative of English Liberty." ¹⁰⁶ Undoubtedly, many colonials shared his view that the charge of treason in the destruction of the *Gaspee* was one of those pretexts which the ministry had invented from time to time to further its sinister ends.

Viewed as one event in a continuum of conspiratorial policies, the impact of the *Gaspee* affair was soon engulfed by the latest installment of Government measures for America. ¹⁰⁷ The belief that Parliament intended to pass a bill which would extend preferential economic advantages to the East India Company, at the expense of other merchants engaged in the business of selling tea, precipitated a new crisis. Actually the controversy surrounding tea was not new in 1773. Along with several other items, tea was included in Charles Townshend's list of taxable commodities in 1767. With the inauguration of the North ministry in 1770, all of the offensive duties had been removed save the one on tea. Americans did not give much notice to the residual tea tax until the spring of 1773 when rumors indicated that Parliament was considering the extension of commercial advantages to the East India Company. ¹⁰⁸

¹⁰⁶ *Ibid.*

¹⁰⁷ Lawrence Henry Gipson, *The British Empire Before the American Revolution*, Vol. XII: *The Triumphant Empire: Britain Sails into the Storm, 1770-1776* (New York: Alfred A. Knopf, 1965). p. 36.

¹⁰⁸ Benjamin Labaree, *The Boston Tea Party* (New York: Oxford University Press, 1964), p. 87.

The Company had experienced economic reverses which threatened it with insolvency. Financial problems, coupled with the growing belief in Parliament that the Company's exclusive control of governing India was no longer desirable, a decision was made to strip the East India Company of its powers in that country, while shoring up its sagging stock. Not permitted to trade directly with the North American ports, the Company disposed of its tea at auction in England.

Tea duties payable in the mother country, plus shipping costs, made the Company's tea a poor competitor when compared with the lower prices of smuggled tea. The financial bill pending before Parliament would permit the Company to send vessels directly to America from its English warehouses. Although the tea duty would remain, provision was made for a drawback and the shippers' profit would be eliminated as well. Specially designated American merchants or consignees would act as agents of the Company, selling the tea and sharing in the profits which it would hopefully generate. The bills effecting the future of the East India Company were signed by the King in May, 1773.¹⁰⁹

Unofficial and garbled reports of the contents of the act reached America by August. By October active opposition to the landing of the Company's tea was evident.¹¹⁰ While colonial objections included the Company's

¹⁰⁹ *Ibid.*, pp. 58-79, *passim*.

¹¹⁰ *Ibid.*, pp. 104-25. *passim*.

tea monopoly in trade with America, the issue of parliamentary taxation was the paramount grievance. Prior to the passage of the act, Company tea was shipped to America by private English merchants. Now the Company's colonial trade would be underwritten by Parliament. To many opponents of parliamentary measures ". . . the plan was a conspiracy between the Ministry and the Company to force American recognition of Parliamentary taxation."¹¹¹

Up and down the continent strong protest to the implications of the act was manifest. Even weeks before the arrival of the first shipments, Bostonians were exceptionally militant. Three tea-laden vessels finally arrived in late November. The Boston committee of correspondence hoped to prevent the unloading of the tea, rather than expose the shipments to any danger from willful destruction. But under no circumstances did the committee intend to permit its unloading at Boston.¹¹²

Governor Hutchinson considered the committee's demands unreasonable. He was confronted with a thorny and technical dilemma. In accordance with the navigation laws all vessels upon entering port were required to pay customs duties within twenty days. The committee wanted the Governor to issue clearance papers to the vessels, thus permitting them to return to England with the tea shipments still on board. Hutchinson contended that he could

¹¹¹ *Ibid.*, p. 258.

¹¹² *Ibid.*, pp. 104-25, *passim*.

not permit clearance once a ship had entered port. The duty would have to be paid within twenty days, followed by unloading of the cargo, or it would be seized by the custom house. In either case it was not to be returned to England. In the wake of this impasse confrontation was inevitable.¹¹³

In the neighboring colony of Rhode Island there was considerable support for the position of the Boston committee. "Legion" assured his Boston friends that they could rely upon Rhode Island's support in their present crisis. Referring to Rhode Island's own notable event, he told Bostonians that ". . . it may be safely affirmed, that it [tea] will not be suffered to be sold here; and that if landed, which is scarce possible, it will be reshipp'd on board the LIBERTY, and sent to GASPEE, the first favourable wind and weather."¹¹⁴

The masters of the vessels were required to pay the tea duty within a specified period of time. When it was clear that the vessels would not be returned to England, and that the duty would be paid, the Boston committee acted.¹¹⁵ On December 15, disguised as Indians, a group of men boarded the three ships, opened the chests, and pitched the tea into the harbor. The incident quickly gave rise to vigorous protest, not only among Englishmen in England but also among sober-minded Americans who could not countenance

¹¹³ *Ibid.*

¹¹⁴ *Newport Mercury*, 13 December, 1773.

¹¹⁵ Labaree, *The Boston Tea Party*, p. 142.

the destruction of private property no matter how justified the grievance.

But the ministry soon alienated many people when it launched a spate of punitive laws in the ensuing months. Seizing the ringleaders for transportation to England was proposed. Initially the attorney and solicitor general opined that trials in England were legal. After further consideration they reversed themselves on the basis of insufficient evidence for a charge of treason. The ministry did not choose to risk the blame for reprisal. Nor were the crown lawyers eager for that stigma. The dilemma was passed on to Parliament. Their response was the Boston Port Bill which stipulated that the port of Boston would be closed until restitution should be made to the East India Company for the loss of its merchandise. To eliminate continued harassment of customs officials, Plymouth would replace Boston as the collecting point. The government of the colony would be removed to Salem.¹¹⁶

Parliament had passed other bills as well. The Massachusetts Government Act prohibited the practice of town meetings in the province, except for election purposes once a year, unless otherwise authorized. A quartering act made taverns and vacant buildings available to the military for housing soldiers.¹¹⁷ By the Administration of Justice Act, the last of the measures,

¹¹⁶ *Ibid.*, p. 183. Bradley Chapin, *The American Law of Treason: Revolutionary and Early American Origins* (Seattle: University of Washington Press, 1968). pp. 19-20.

¹¹⁷ Merrill Jensen, *The Founding of a Nation: A History of the American Revolution, 1763-1776* (New York: Oxford University Press, 1968), pp. 456-57.

any British officer charged with a capital crime allegedly committed in the colonies, might take his trial in another colony or in England.¹¹⁸ The Administration of Justice Act emphasized the ministry's dogged persistence to make use of the unpopular principle of trials beyond the seas.

During the summer of 1774, Thomas Jefferson, in addressing himself to the many laws which Parliament had passed, the many policies which the ministry had implemented, devoted space in his *A Summary View of the Rights of British America* to this continuing American fear of trials out of the vicinage. He quoted from the Administration of Justice Act, knowing full well that it was intended for the protection of British officials and loyal subjects of the crown, rather than as punishment for opponents of parliamentary and administration measures. In his discourse he recalled the Rhode Island experience:

A clause for a similar purpose had been introduced into an act, passed in the 12th year of his majesty's reign, intitled "An Act for the better securing and preserving his majesty's dockyards, magazines, ships, ammunition, and stores"; against which, as meriting the same censures the several colonies have already protested.¹¹⁹

Again, during the summer of 1776, in the Declaration of Independence, Jefferson made implicit reference to the commission of inquiry and the Administration of Justice Act, when he chastised George III "For transporting

¹¹⁸ *Ibid.*.

¹¹⁹ Thomas Jefferson, *A Summary View of the Rights of British America*, Thomas P. Abernethy, ed. (New York: Scholars' Facsimiles & Reprints, 1943). pp. 15-16.

us beyond the Seas to be tried for pretended offences . . ." ¹²⁰

The issue of trials beyond the seas remained a perennial grievance to American revolutionaries, long after the commission of inquiry, and the event which had led to it—the burning of the *Gaspee*—were vivid memories only in the minds of Rhode Islanders. Tea had preempted the commission of inquiry; the Intolerable Acts had preempted tea. Jefferson explained it well:

Single acts of tyranny may be ascribed to the accidental opinion of a day; but a series of oppressions, begun at a distinguished period, and pursued unalterably through every change of ministers, too plainly prove a deliberate and systematical plan of reducing us to slavery. ¹²¹

With such a wide range of injustices to choose from, why dwell upon the *Gaspee* affair or the commission of inquiry?

American revolutionaries did not dwell upon either. They found new justification after 1773 to substantiate their conviction that a vindictive Parliament and ministry, handily assisted by American informers who misrepresented the true state of affairs, had joined forces toward a common cause—the deliberate subversion of the British constitution in the colonies. Not one of them doubted, but rather sincerely believed, that the commission of inquiry, Great Britain's answer to the burning of the *Gaspee*, provided a vital link in the chain of tyranny which led these American revolutionaries to declare their independence.

¹²⁰ Declaration of Independence.

¹²¹ Jefferson, *A Summary View*, Abernethy, ed., p. 11.

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Brown University. John Carter Crown Library. American Manuscripts. The Brown Papers, 1772-1774.

_____. John Carter Brown Library. Manuscript Records. Gaspee Commission.

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This brief narrative is one of the best illustrations of the idea of conspiracy which loyalists and royal officials perceived in the *Gaspee's* destruction.

_____. University of Michigan. William L. Clements Library. General Thomas Gage Manuscripts. American Series. Vols. III, CXII. CXVI.

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_____. Newport Historical Society. Henry Marchant Letter Book.

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_____. Moses Brown Papers. Vol. II.

Rhode Island State Archives. Acts and Resolves of the Colony of Rhode Island.

_____. Collected Letters from 1731 to 1849. Vol. VII, 1763-1775.

_____. Gaspee Commission Papers.

This collection comprises the bulk of information relating to the *Gaspee* Affair. It includes: official correspondence from England concerning the commission of inquiry; depositions and affidavits; the Journal of the Commissioners; the Report to the King. Most of Staples' and Bartlett's editing was based upon the contents of the Gaspee Commission Papers.

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For a discussion of attacks upon navy vessels and personnel see Volume VI. The largest published collection of material bearing specifically upon the *Gaspee* Affair is found in Volume VII of Bartlett's *Records*, which will prove extremely useful to the scholar who cannot avail himself of the *Gaspee* Commission Papers in manuscript. Bartlett's nineteenth-century edition employed modernized spelling, occasional word changes and omissions (some crucial), and a few serious errors regarding dates. While it is valuable for the most part, it should be used with circumspection.

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