THE ROLE OF THE VICE-ADMIRALTY COURT AT ST HELENA
IN THE ABOLITION OF THE TRANSATLANTIC SLAVE
TRADE:
A PRELIMINARY INVESTIGATION (PART 1)

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1 St Helena: The geographical setting

St Helena is known, foremost, as a place of incarceration.1 However, the island has also been a place of liberation. This contribution seeks to cast some light on the role played by the Vice-Admiralty Court of St Helena during the nineteenth century in the liberation of African slaves taken from captured slave ships and brought to the island. The Court played a significant part despite, or maybe because of, the island’s sheer isolation and extreme remoteness.

St Helena is a volcanic island in the South Atlantic Ocean, latitude 15° 55’ south, longitude 5° 45’ west. Some 1950 kilometers due west of Angola on the African continent (her nearest mainland) and some 2900 kilometers from the

1 Her most famous prisoner was, of course, Napoleon Bonaparte whose captivity on the island 1816-1821 has sprouted a mass of literature: see, eg, Giles Napoleon Bonaparte: England's Prisoner: The Emperor in Exile 1816-1821 (2001). However, there have been numerous other prisoners: Zulu Chief Dinizulu and his family 1890-1897; more than 6 000 Boer prisoners of war 1900-1902; twenty five more Zulus in 1907; the Sultan of Zanzibar with his retinue and harem1917-1921; and three conspirators from the Sultanate of Bahrain 1957-1961.
South American continent, the island lies 1130 kilometers south-east of Ascension Island, the nearest land. St Helena Island is the land mass furthest away from any other body of land. She may be reached, at present as always in the past, only by sea, most conveniently by way of a five-day voyage by ship from Cape Town some 2726 kilometers to the south-east.

The island is small, seventeen kilometers long, 10,5 kilometers wide and 122 square kilometers in area. Her main settlement and capital, Jamestown, on the north-western side, has no harbour: visiting ships anchor in James Bay and passenger and cargo are conveyed to shore by launch.²

2 St Helena: The historical background

2.1 The Company period to 1834

The Portuguese discovered the uninhabited island on 21 May 1502, the feast day of St Hellena, the mother of Emperor Constantine the Great. They called it St Helena. After having kept their discovery secret for many decades, the Portuguese later lost interest and no longer formally laid claim to the island. The Dutch, in the form of the Dutch East India Company, then claimed possession of it in 1633, but they left no evidence of any occupation, colonisation or fortification. They abandoned any claim to the island in 1651, the year before they established a settlement at the Cape of Good Hope.
Realising her strategic location as a port of rendezvous and replenishment for its merchant vessels on their way back to Europe from the East, and seeing an ideal opportunity to preempt any change of mind on the part of its rival Dutch competitors, the English East India Company took possession and first settled the still uninhabited island in May 1659 when Captain John Dutton started building a fort and establishing a garrison there. The English East India Company’s settlement and possession of the island was acknowledged by a clause in a charter from Charles II in April 1661.

Thus commenced a period of virtually undisputed possession of St Helena by the East India Company. Apart from a short-lived Dutch occupation in 1673, and the period of Napoleon’s captivity from 1815 to 1821, the Company was to remain in possession and control of the island for 175 years.

The East India Company administered St Helena through a governor and a council appointed by the Company’s Court (or Board) of Directors in London. Both military and civil servants of the Company were posted to the island, where they were joined by English settlers. Under Company control, St Helena

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4 On outward-bound voyages, ships sailed hundreds of kilometres west of the island. For the maritime history of St Helena, see Denholm *South Atlantic Haven: A Maritime History for the Island of St Helena* (1994).

5 A charter from Richard Cromwell dated 1567 had authorised the Company to fortify and colonise any of its establishments and to transport to them settlers, stores and ammunition. It made no mention of St Helena specifically. The Company’s plans to settle the island were only drawn up in 1658 and the commission given to Capt Dutton in Jan 1659 referred to the island. See further Foster “The acquisition of St Helena” 1919 *English Historical Review* 281-289.

6 It is reproduced in Smallman (n 3) appendix ii at 131-136.

7 On the Company generally, see Keay *The Honourable Company. A History of the English East India Company* (1993); on its possession of St Helena, see Royle *The Company’s Island: St Helena, Company Colonies and the Colonial Endeavour* (2007). There is also a highly readable account in Steiner & Liston (n 2) 6-21.

8 After England had declared war on the Netherlands in 1672, a Dutch squadron landed on St Helena on 31 Dec 1672 and overpowered the small English force on the island, compelling the English settlers and Company employees to seek shelter on ships in the bay. The Dutch remained in possession for only five months and were swiftly expelled by an English force under Capt Richard Munden in May 1673. See further Kitching “The loss and recapture of St Helena 1673” 1950 *Mariner’s Mirror* 58-68. Following the reoccupation, the Company was granted a new (second) charter by Charles II in Dec 1673, in which it was declared “true and absolute Lords and Proprietors of the island and premises” and given administrative, legislative and judicial powers.

9 Although it retained proprietorship of the island, the Company briefly relinquished some control during the captivity period from Oct 1815. A provisional government, including a governor appointed by the Crown, and a military and naval presence on and around the island temporarily replaced Company structures. Rear-Admiral Sir George Cockburn (1772-1853), sometime commander-in-chief at the Cape of Good Hope naval station, was the flag officer on board the HMS *Northumberland* that carried Napoleon to St Helena. He had orders and was appointed to take charge not only of the captive’s conveyance, but also to be in supreme command of all matters pertaining to his captivity on the island. That meant that upon arrival, his authority superseded that of Company governor. Cockburn remained on St Helena as temporary governor until the arrival of Sir Hudson Lowe who had been appointed by the British government in the place of the Company governor, Col Mark Wilks. After the death of Napoleon, in May 1821, the Company again resumed full and direct control of St Helena.

10 After rivalry between the original English East India Company and the New East India Company (created in 1689), the companies merged in 1708, forming the United Company of Merchants of England Trading to the East Indies. St Helena was then transferred from the old company to the new entity, the United East India Company becoming its owner.
was a military as well as civilian establishment: the governor was also the commander of the military and Company soldiers were subject to civilian as well as military law.

However, under Company rule, St Helena was never more than its “first and half-forgotten settlement”. As long as the Dutch kept to the Cape of Good Hope and the island continued producing fresh fruit and vegetables for scurvy-prone passing English seamen, the Company and its directors were prepared to finance it but further tended rather to ignore it. The Company’s possession and control were extremely generous and costly: it annually expended between £80,000 and £90,000 on the island’s maintenance and administration and never turned a profit of more than £4,000 from the settlement; it paid Company servants handsome salaries and further maintained a military compliment of more than 700 men with their wives and children there.

The main reason why the East India Company persevered with loss-making settlements like St Helena was its reluctance to write off investments or to relinquish privileges, and also the perceived likelihood that its Dutch or French rivals might obtain some commercial advantage should it relinquish the strategically situated island. Under Company control, the island therefore remained a financial burden and administrative liability and never achieved self sufficiency.

However, the Company’s control was not to endure.

When the British government decided to terminate the East India Company’s monopoly on the tea trade to China, something it considered to be a major

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11 More than 400 men of the St Helena Regiment and Artillery were dispatched by the governor, Col Robert Brooke, to the Cape and took part in the Battle of Muizenberg during the First British Occupation in 1795. See further Gosse (n 3) 223-225.

12 From the *St Helena Calendar and Directory for 1828*, one may gather some idea of the Civil Establishment on the island: apart from the governor (then Brig-Gen Alexander Walker) and the council (comprised of the governor and two other company officials), four senior and four junior merchants represented the Company. There were also two factors, a number of writers (clerks), and a Secretarial Department, an Accoutant’s Department, a Paymaster’s Department, and a Store Department. The Military Establishment consisted of a General Staff (with Governor Walker as the commander-in-chief, a town mayor, a garrison quarter-master, a judge advocate, and a military secretary), the St Helena Corps of Artillery and the St Helena Regiment. There was also a Medical Establishment, an Island Militia, and a Judicial Department (about which more shortly: see n 27 below).

13 Keay (n 7) 179.

14 Company servants often enforced harsh discipline on settlers while the Company not only turned a blind eye to their perpetration of barbaric practices, but on occasion also deported criminally convicted Company servants from India and the Far East to penal servitude on the island: see Keay (n 7) 241 and 251.

15 See Gosse (n 3) 301-303; Smallman (n 3) 60.

16 See Keay (n 7) 250.
hindrance to the general expansion of British trade with the Far East, it passed the Government of India Act, 1833.17

By this Act, one “for effecting an Arrangement with the East India Company and for the better Government of His Majesty’s Indian Territories till the 30th day of April 1854”, British territories in India were to remain under the government of the East India Company until 1854, while the real and personal property of Company was to be held in trust for the Crown. The Act further circumscribed the Company’s primacy in India by the appointment of a governor-general and generally opened the way for other, private traders to enter the Far East trade.18

The Government of India Act also terminated the Company’s possession of St Helena. Its section 11219 provided that the island of St Helena “and all Forts, Factories, Public Edifices, and Hereditaments whatsoever in the said Island, and all Stores and property thereon fit and used for the service of the Government thereof” would be vested in His Majesty William IV. The island would be governed by such orders as the King-in-Counsel may issue from time to time.20 That would be the position, formally, as from and after 22 April 1834.21

This came as quite a surprise not only to the Company but also to those on the island, Company officials and servants and other settlers alike. They realised that the Crown would have a radically different approach to and requirements from the island. And they were not wrong.

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17 3 & 4 Will IV c 85.
18 The Act also continued and probably hastened the decline of the East India Company, even though its charter was renewed in 1834 and again in 1854 and did not finally expire until 1874. Its military and commercial assets passed to the Crown in 1856 and the last meeting of its Court of Directors took place in 1858.
19 Subsequently the unrepealed s 112 of the Government of India Act – the rest of the Act was repealed in 1915 – became known as the St Helena Act, 1833.
20 S 112 has to be read in conjunction with the preamble to the Act which referred to the fact that the Company was entitled to claim St Helena and Bombay under grants from the Crown, and that it had consented that all its rights to or in the said territories be placed at the disposal of Parliament. Earlier, the East India Company Act, 1813 (53 Geo III c 155), that had confirmed that the possession of British territories in India continued in and remained under the government of the East India Company for a further term, had also provided that the Company remained entitled to the island of St Helena and Bombay under its grants from the Crown. Also, the Royal Charter of 1673 had in any case made the Company’s right of entitlement subject to that of the Crown.
21 See further the governor’s Procl of 22 Apr 1834 (reproduced in Castell (ed) Saint Helena Proclamations, 1818-1943 (2004) 138), referring to and quoting s 112 of the Act of 1833, and mentioning a despatch of the Company’s Court of Directors of 23 Jan 1834 to the St Helena government “that at the request of His Majesty’s Ministers, they have undertaken to administer the Government of the island, in the name of the Crown for one year, from this 22nd day of April (unless a final arrangement should be previously made by the King’s Government)”; and also the Procl of 27 Feb 1836 (reproduced in Castell 190), notifying the inhabitants and others connected with the island of His Majesty’s gracious disposition to make every necessary and proper provision for the good government of the settlement.
The safety net of the Company’s unspoken commitment to finance the island’s administrative and commercial costs was removed in an instant. The conversion from a subsidised, strategically crucial and indispensable supply depot, factory, and victualling port to a self-financing, economically independent military outpost and colony took place almost immediately.

The new governor, Major-General George Middlemore, who only arrived with his garrison in February 1836, had strict instructions to cut costs and reduce the establishments on the island. Most Company civil servants were dismissed – only a few received small pensions from the Company – and they either left the island or became colonists; Company regiments were summarily disbanded without compensation or offer of engagement in the newly arrived royal garrison; the population was reduced by one-quarter when some 200 penurious former Company officials emigrated to the Cape of Good Hope in 1838; and most of the economic activity on the island was much reduced if not completely halted. Governor Middlemore, who was in any event notorious for his rude manners and unfair treatment of former Company officials, was certainly not popular, even though he himself received less than one-quarter of the annual salary of £9 000 the Company had paid his predecessor.

The history of St Helena after 1834 is generally one of a severe decline in personal fortunes and economic prospects for those who remained: in addition to officials of the colonial administration, a sprinkling of pensioned East India Company servants, a few long-established British settler families, and a number of servants, mainly former slaves. Increasingly, too, the island slipped further down the government’s colonial ladder of priorities. Thus, in his report on the colony for 1890, the governor declared that

poverty and suffering, though bravely borne, have ... engulfed far too many. Our solitary and isolated position, if strategically important, affords us none of the advantages which generally attend thereon. Too insignificant and remote from the mother country to arouse any general interest, we have for many years been the plaything of fate.

22 Stewart Taylor (n 2) 45.
23 See further Gosse (n 3) 301-303.
24 More about them shortly: see par 2 3 below.
25 See BPP: Col Gen Vol 30 at 625.
After 1834, St Helena’s civil establishment continued to be spearheaded by a governor – now appointed by the Crown and hence addressed as “His Excellency” rather than as “Honourable” when he had simply been the Company’s representative – a council and large civil staff. More important, for present purposes, is the judicial structure that existed on the island.

Under the East India Company, the justice system was administered by the Company which had the power to establish and hold courts of justice there, both criminal and civil. In 1678, under the governorship of Major John Blackmore, a Court of Judicature was established for criminal and civil matters. It sat four times a year, with cases being tried by the governor as the sole judge. A jury system was soon introduced. Apart from judicial officers, such as the those of the criminal court (the Justices of the Peace and Commissioners of Oyer and Terminer and General Goal Delivery, as they were referred to), there were also several other court officials such as a sheriff, a clerk of the peace, a marshal and goaler, and constables and coroners.

In 1682, the Company drew up laws and a constitution for the island. Nominally, the courts applied English common law to order the civil society on island, but the fact that the governor, a Company servant, was also the principal judicial officer not surprisingly created some tension between the administration of justice, on the one hand, and the economic interests of the Company and the personal interests of its officials, on the other hand.

22 St Helena as Crown Colony: The judicial framework

There are several collections of legislative enactments emanating from or pertaining to St Helena. Unfortunately copies are rare. I made use, in the main, of the following collections available either in the British Library or in the St Helena Archives: *St Helena Ordinances 1857-1950* in 3 vols (1857-1907, 1908-1937 and 1938-1948); the *Local Laws of the Island Saint Helena ... promulgated to 31 December 1853 ...* (1854); *A Revised Edition of the Laws of the Colony of St Helena ... in Force on the 31st December 1950 ...* (1952), which contains useful tables, eg, a table of ordinances in force, a chronological table of ordinances 1839-1950, and a table of subsidiary legislation. See also Castell (n 21) for a fascinating albeit selective collection of reproduced legislative – and other – material.

See Gosse (n 3) 77. Grand juries were usually composed of civil servants, military officers and principal land freeholders, while petit juries were drawn from smaller free and leaseholders: *idem* 193-194. In the St Helena Archives, there are 12 volumes of criminal trials at session, dating from 1762, all trials of an earlier date being entered on Council proceedings: see Jackson (n 2) 169.

See, eg, the *St Helena Calendar and Directory for 1828* for the composition of the Judicial Department. There was also a separate judge advocate in the Military Establishment: see n 12 above.


One example, from the St Helena Quarter Sessions of the Court of Oyer and Terminer and General Goal Delivery, of 6-7 Oct 1813 (see Oct 1813 *St Helena Monthly Register* 33), involved the trial of Elizabeth Braid, the wife of Capt Andrew Braid of the St Helena Artillery, for the murder of a slave girl Mary Hairne. Governor Wilks was the presiding judge. Although acts of cruelty were proved, the jury concluded that they did not cause the girl’s death. The accused was acquitted and Capt Braid, who had been charged as an accessory, was fined £75 for neglecting to prevent the ill-treatment of a slave. See further generally Royle (n 7) 56-72, on law and morality on St Helena during the Company period.
Company itself did little to address these issues. In the 1760s, with the restructuring of the judicial system on the island, its Court of Directors disapproved of a proposal to send out a professional lawyer to be the clerk of the peace and instead enjoined the governor and the council to discourage litigation as much as possible.\(^\text{31}\)

Maybe for that reason, lawyers continued to be unpopular on the island. Thus, one idyllic nineteenth-century description of the island:

No thunderbolts nor lightning shafts, no burning drought nor deadly disease, no savage brute nor noxious reptile, not even a lawyer, surely this St Helena ... must be the ‘Island of the Blessed’ so fondly believed in and so earnestly sought for by ancient mariners.\(^\text{32}\)

On St Helena becoming a Crown Colony, existing laws remained in force,\(^\text{33}\) but the judicial system was soon revamped. The first and main step was the creation of a Supreme Court.

The establishment of the St Helena Supreme Court was only finally achieved after several local, gubernatorial attempts had failed. After first Ordinance 2 of 1837 (dated 7 Feb 1837) and then Ordinance 8 of 1837 (dated 18 Dec 1837), both “to establish a Supreme Court of Justice”, had been repealed because of objections from London, Ordinance 16 of 1838 (dated 4 Aug 1838), “for the Administration of Justice in St Helena”, finally appeared to have got it right. But it, too, was soon replaced by royal regulation.

An Order-in-Council of 13 February 1839\(^\text{34}\) was passed for “the better and more effectual administration of justice in the island of St Helena”. It established a Supreme Court as a court of record in section 1 and in section 15 conferred on it cognisance over all pleas and jurisdictions in all causes, civil, criminal or mixed, arising within the colony, with jurisdiction over all royal subjects, and all other persons whomsoever, residing and being within the

\(^\text{31}\) See Gosse (n 3) 194 who also observes at 78 that “[p]ractising lawyers have always been discouraged from settling at St Helena from the earliest days”. On the absence of lawyers on the island, see also Stewart Taylor (n 2) 119-120, 121, and 122.

\(^\text{32}\) Gill \textit{Six Months on Ascension Island} (1878) at 44, quoted in Schulenburg “‘Island of the Blessed’: Eden, Arcadia and the Picturesque in the Textualizing of St Helena” 2003 \textit{J of Historical Geography} 535 at 536 n 17.

\(^\text{33}\) Although an Order-in-Council of 12 Oct 1835 already determined that until further notice, all East India Company by-laws as well as other laws in force on the island were to remain in force, uncertainty about precisely which laws were applicable and effective appears to have arisen quite frequently. Over the years several measures had to be promulgated to remove any doubts. Generally they provided that all lawfully enacted local by-laws, ordinances and orders-in-council which had neither expired by the efflux of time nor been repealed, were in force, and further declared in force on the island, subject to such laws, so much of the law of England as was applicable to local circumstances: see, eg, Ord 1 of 1868 and Ord 2 of 1887.

\(^\text{34}\) SI 1839/5001. The Order was made public for general information by a Government Advertisement of 3 Sep 1839 (reproduced in Castell (n 21) 273).
colony. According to section 16, the Court had to judge and determine all questions arising according to laws then or in future in force in the colony.

Several sections of the Order dealt with the appointment and qualifications of the Chief Justice; with the appointment of an Acting Chief Justice, and with the prohibition on the Chief Justice's entitlement to any fees of office, perquisites, emoluments or advantage besides his salary, or his accepting or holding any other office or place of profit or emolument, on pain of avoidance of his office as Chief Justice and the cessation of his salary. Other sections concerned the appointment and functions of other officers of the Court. As practitioners, the Supreme Court could by section 11 allow fit and proper persons to be admitted “to act as well in the character of Barristers or Advocates, as of Proctors, Attorneys, and Solicitors”. Appeals lay from the St Helena Supreme Court to His Majesty-in-Council – that is, to the Privy Council – against any of its judgments, decrees, orders or sentences in civil matters amounting to more than £500. Finally, in settling the issues earlier objected to, section 26 provided that the rules of court (that the Chief Justice could make from time to time), the form of proceedings and execution, the fees and emoluments, matters concerning juries, and the admission of practitioners, all had to be in conformity with the Order. Further, they all had so far as possible

35 In terms of s 2, he was to be appointed by Letters Patent, under the Public Seal of the Island, and had to be a barrister in England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing. For the rank and precedence of the Chief Justice, see s 5.
36 S 3 provided that in the event of the death, sickness, incapacity, resignation, absence or suspension from office of the Chief Justice, the governor by Letters Patent, under the Public Seal of the Island, had to appoint a fit and proper person to act in his place until the Chief Justice resumed office, or until a new appointment had been made by the Crown. See s 4 for the power of the governor to suspend the Chief Justice provisionally from his office, and from the discharge of the duties of his office “upon the most evident necessity and after the most mature deliberation”. The Crown then had to confirm or disallow such suspension. This measure was subsequently refined. By an Order-in-Council of 5 Apr 1852, the governor of the island either had to appoint a fit and proper person to fill any vacancy in the office of Chief Justice, or could himself lawfully act in that capacity if he could not make any appropriate appointment and until London could fill it. See also the Order-in-Council of 29 Jun 1878, providing that when the governor so acts, he had the power also of requiring the advice and assistance of the council or of any two or more of its members as assessor members of the Supreme Court in any civil or criminal case, whether the trial takes place with or without a jury.
37 However, the Chief Justice was subsequently also empowered to act as the judge in the island's limited-jurisdiction Summary Court (established by Ord 35 of 1840, and further refined by Ord 3 of 1856): see Ord 4 of 1865, combining the duties of the Summary Judge with those of the Chief Justice of the Supreme Court, and Ord 1 of 1875, arranging that when the governor acted as Chief Justice, he could also appoint a fit and proper person to act as judge of the Summary Court.
38 See ss 7 and 8.
39 These included the Clerk of the Peace and the Registrar and so many other officers as the Chief Justice may appoint as necessary for the administration of justice (s 9), and also the Sheriff (see ss 12-14).
40 This is the only reference in the Order to anything vaguely connected to Admiralty courts, a proctor being the civilian equivalent of a common-law solicitor in civilian courts, such as Admiralty and ecclesiastical courts. For the Supreme Court’s ecclesiastical jurisdiction, see s 20, and see also at n 201 below for those who acted as proctors on St Helena.
41 See s 24 which also deals with the permission required for and the effect of appeals, their suspension, and the provision of security.
to follow corresponding rules and forms of Courts of Record in Westminster, and further had to be confirmed by the Crown.

The Supreme Court sat, as it today still does, in the Court House building in Jamestown, a structure dating from around 1817. Its judgments were never officially reported42 and few of its decisions were ever appealed to London and in that way gained permanence in the law reports.43

The first Chief Justice of the Supreme Court of St Helena was William Wilde. Little is known of his background and education.44 He was appointed from 19 December 1836.45

42 In later years, it seems, some of its decisions were published in the *St Helena Gazette* if they were thought of sufficient public interest and importance: see, eg, the *St Helena Gazette* of 2 Jul 1873 for the decision in *Judd v Kerr*, a case involving a claim for damages by a former barrack sergeant against the commanding officer of the troops on the island and concerning the question whether the Supreme Court had jurisdiction in a matter involving military law and coming within the Mutiny Acts and the Articles of War.

43 One interesting exception was the decision in *Ex parte Lees* (1860) El Bl & El 828, 120 ER 718. It concerned a criminal conviction by the St Helena Supreme Court (during “Criminal Sessions of the Supreme Court of the Island of St Helena, holden at James Town, in and for the Island of St Helena, on the first day of October AD 1856”, before the Chief Justice and nineteen (!) jurors) at common law. At issue were the grounds upon which and requirements to be met before the Queen’s Bench would interfere with the execution of its sentence by granting a writ of error to the Supreme Court to reverse its judgment. Lees, a mariner, had been charged with forcibly and with arms assaulting a named person, on the high seas, on board a named ship, and within the jurisdiction of the Court, by firing a pistol at him with the intent to kill, or with the intent to maim, disable and do grievous bodily harm. He had pleaded not guilty to the first three charges but guilty to the fourth. He was summarily (“then and there”) found guilty of assault with the intent to do grievous bodily harm and sentenced to three years’ imprisonment in the Jamestown goal. The Queen’s Bench ultimately decided not to interfere, in the way applied for, with the decision of the island’s Supreme Court as it lacked the authority to do so. The judgment also gives some background to the St Helena Supreme Court (eg, by referring to the relevant provisions of the Order-in-Council of 13 Feb 1839) and also to the Admiralty Court of Commissioners established on the island in 1843 for the trial of offences on the high seas (and about which more in par 4 4 below).

44 He does not appear to be in anyway related to either (1) Thomas Wilde, first Baron Truro (1782-1855), Solicitor and Attorney-General, Chief Justice of Common Pleas, and later Lord Chancellor 1850-1852 (see his entry in the *Oxford DNB*) and (2) his older brother, Sir John Wylde (who had changed his surname thus from the family name Wilde) (1781-1859), Chief Justice of the Cape of Good Hope 1828-1859, or (3) the latter’s nephew James Plaisted Wilde, Baron Penzance (1816-1899), Baron of Exchequer 1850, and Judge in the Court of Probate and Divorce 1863 (see his entry in the *Oxford DNB*). However, the surname Wilde (or Wylde) is not an unfamiliar one in high judicial office: there was also a Sir William Wylde, Recorder of London during the days of Samuel Pepys; a George Wylde, Chief Baron of Exchequer during the Commonwealth, and a Mr Justice Wylde on the Court of Star Chamber. On Sir John Wylde, see S St L S “Sir John Wylde” 1933 SALJ 284-297.

45 See Governor Middlemore’s Procl of 19 Dec 1836 (reproduced in Castell (n 21) 218) stating that the Crown, through the Secretary of State, had authorised and required him, through the colonial secretary, to cause Letters Patent to be passed under the Seal of the island constituting and appointing William Wilde Esq to be Chief Justice of the island, and to include in those Letters a clause or proviso obliging him “to actual residence within the said Island, and to execute the said office in his own person”, except in case of sickness or other incapacity. Accordingly, the Proclamation continued, from and after its date all judicial functions and duties performed and exercised before by the governor and the council in the civil and criminal courts of the island, would cease and determine, and be vested in and performed and exercised by Judge Wilde.
Proclamation of 19 December 1836 appointing William Wilde as the Chief Justice of St Helena.

His salary was paid from the Colonial Fund. Save for a few periods of leave or absence, during which the governor appointed the island’s Sheriff to act in

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46 £700 in 1855 and still the same in 1858: see the Blue Book for 1855 and for 1858 in NA, CO 252/23.
47 Notably during 1853-1855, apparently for reasons of health: see the addresses to Wilde on his departure for England in the St Helena Herald of 24 Feb 1853 and also in the St Helena Chronicle of 26 Feb 1853; see also SHA, Secretary of State Despatches Vol 15 (1852) at 269-271, letter from the Secretary of State to Governor Thomas Gore Brown, 8 Apr 1852, in which Wilde was granted leave of absence but not on full salary as he had requested, and the governor was reminded of the provisions contained in the Order-in-Council of 13 Feb 1839 regarding the performance of the duties of the Chief Justice in his absence.
his place, Wilde served in that capacity until January 1863, when he retired and returned to England.

During his tenure of more than twenty six years as a colonial judge, William Wilde played an important part in the judicial history of St Helena, none the more so, as will be described later, in his capacity as Judge of the island’s Vice-Admiralty Court. His influence was all the greater because as qualified lawyer he was entrusted with the administration of law without the assistance of any other qualified lawyers on the island who could either serve as officials in or appear before the local courts. Further, as Chief Justice Wilde enjoyed precedence next to the governor, he no doubt played an important role in civil society too.

On Wilde’s retirement, his place was taken by William Robert Phelps who was appointed on 2 June 1863 and remained in office a little more than four years. The next appointee was John Norcross Firmin, from 18 November 1867, apparently only in an acting capacity until a permanent appointment could be made.

48 Nathaniel Solomon, then Sheriff of the Supreme Court, acted as Chief Justice 1853-1855 during Wilde’s absence: see the St Helena Chronicle of 22 Jan 1853 and of 5 Mar 1853, and the St Helena Herald of 5 Apr 1855 (where the editorial deprecates the practice of appointing to the Bench a person not legally qualified). Nathaniel was one of the three sons of Saul Solomon, the influential trader who had settled on St Helena at the end of the eighteenth century. One of his uncles, Joseph Solomon, emigrated to the Cape around 1830 and the latter’s son, and Nathaniel’s cousin, was Saul Solomon (1817-1892), the well-known Cape newspaper proprietor (the Cape Argus) and parliamentarian. The St Helena Solomons and their connections monopolised the prestigious albeit non-salaried post of Sheriff on the island: Saul snr 1839-1842 and 1846-1850; his brother Lewis Gideon (who had taken on a new surname) 1842-1844 and 1852-1856; his son Nathaniel 1853-1855 and 1859-1860; his partner George Moss 1870-1880; and his other son Saul jnr 1880-1888. See further Hearl “In search of Saul Solomon of St Helena 1776-1852” (1994), available at http://website.linmeone.net/~sthelena (7 Apr 2005).

49 He retired with a pension of £700 per annum, one he was still drawing in 1879.

50 See s 5 of the Order-in-Council of 13 Feb 1839 as to his rank and precedence; see also SHA, Secretary of State Despatches Vol 12 (1849) at 179-180, letter from the Secretary of State to Governor Patrick Ross, 22 May 1849, containing instructions as to the precedence in the Diocese of St Helena of the Bishop of Cape Town (who had arrived for his first visit to the island in 1849) and that of the Chief Justice of the island, and informing that the exceptions mentioned to the precedence of the latter did not apply to colonial bishops, an arrangement it was thought not desirable to disturb.

51 Phelps (1828-1867) was the son of Samuel Phelps (1804-1878), famous actor and theatre manager in London (see his entry in the Oxford DNB).

52 Firmin, who had been in the service of the East India Company for twenty three years and received from it an annual pension of £90, was a long-time Clerk of the Peace on the island from at least 1839: see the proclamations of 1 Mar 1839 (reproduced in Castell (n 21) 258) and of 27 May 1839 (reproduced idem 244), appointing him first in an acting capacity and then permanently in that position. He was also the Queen’s Advocate on the island during various periods dating from 1839 until at least 1869; see, eg, the Blue Book for 1858, confirming his appointment in that capacity on 27 May 1839; the Government Notice of 30 Nov 1863 (reproduced in Castell (n 21) 395) announcing his nomination as such by royal warrant of 22 Aug 1863; and BPP: Col Gen Vol 4 at 136, confirming the permanent appointment of acting Queen’s Advocate Firmin. As Clerk of the Peace and Queen’s Advocate, Firmin drew a separate salary for each office (£200 per office in 1855 and also in 1858: see the St Helena Almanac for 1855 and the Blue Book for 1858). He was further also at various times the Registrar of both the Supreme Court (see n 58 below) and the Vice-Admiralty Court, about which more later: see n 187 below.
Although some successors to the office of Chief Justice are mentioned in various sources,\textsuperscript{53} from 1874 the governor of the island with very few exceptions\textsuperscript{54} acted \textit{ex officio} as Chief Justice as was provided for in the relevant orders-in-council.\textsuperscript{55}

The Court’s first Registrar was Robert Francis Seale, then the colonial secretary, and a former Company servant, but he fell out with Governor Middlemore and was dismissed from his appointment in 1838, before the Supreme Court was properly constituted by the Order-in-Council of February 1839.\textsuperscript{56} In his place as colonial secretary was appointed, rather confusingly, a namesake, William Henry Seale.\textsuperscript{57} Whether the latter also acted as Registrar of the Supreme Court could not be ascertained, but John Norcross Firmin was appointed in that capacity in April 1842.\textsuperscript{58}

2 3 St Helena and slavery

The abolition of international participation in the transatlantic slave trade, in which Vice-Admiralty Courts, including that on the island of St Helena, played such a crucial role, was preceded by the abolition of slavery in Britain and her colonies as well as by the abolition of British participation in that trade. On St Helena, slavery and slave-trade abolition measures mirrored those elsewhere in the Empire\textsuperscript{59} and, problematically, coincided with the island’s acquisition of its status as a Crown Colony.

\begin{footnotes}
\item[53] For instance, Joseph S Williams, appointed from 30 Jul 1868, but on leave from Nov of that year (see the \textit{St Helena Almanac} of 1913); and William Alexander Parker, appointed from 3 Jul 1869 and remaining in office until 1874 (\textit{ibid}).
\item[54] Nathaniel Solomon acted in 1875, for instance.
\item[55] See the Note to this effect in the \textit{St Helena Almanac} of 1913. The orders are those of 13 Feb 1839 and 5 Apr 1852: see n 34 and n 36 above.
\item[56] Robert Francis Seale (1791-1839), a former major in service of the Company, was the son of Francis Seale, a subaltern in the St Helena Regiment who scandalously left his wife and children and took up living with a local girl. Their son, Robert Francis, was schooled in England and appointed as a junior writer in the Company’s service on St Helena in 1807. He is best known for having charted the island’s coastline and produced a map of it in 1823. In 1836, after the transfer of the island to the Crown, he was appointed the first colonial secretary (he received an annual salary of £400 in addition to his Company pension of £500). In 1838, heavily indebted and facing a charge of defalcation (which was subsequently withdrawn), he was dismissed from his appointments. He died in poverty in England the next year. See further Gosse (n 3) 303-309. Six of Seale’s aquarelle views of the island are reproduced in Castell \textit{St Helena Illustrated (1502-1902)} (1998) 105-108.
\item[57] See the Procl of 27 May 1838 (reproduced in Castell (n 21) 244). He was a clerk of the peace in 1836 and was also Registrar of the Vice-Admiralty Court from 1840 (see n 154 below). There were also other Seales. Two are mentioned in the Procl of 7 May 1836 (reproduced in Castell (n 21) 191): a William Seale, in 1836 a Company office keeper; and George V Seale, also a former Company employee who was Marshal of the Vice-Admiralty Court 1863-1868 (see n 193 below).
\item[58] See n 52 above.
\item[59] Useful in this regard is the “Memorandum by His Majesty’s Government in the United Kingdom summarising the legislation enacted in the non-self-governing colonies, protectorates and mandated territories dealing with slavery and conditions analogous thereto” 1938 \textit{League of Nations Official J 492 et seq} (St Helena is dealt with at 504).
\end{footnotes}
In *Somerset v Stewart*, Lord Mansfield declared in 1792 that slavery was contrary to natural law and, in the absence of any positive law permitting it, a practice illegal in Britain. In consequence, the some 14,000 slaves in Britain, or those who would in future be brought into Britain, were free. The judgment effectively put an end to the traffic in slaves in London and elsewhere in Britain.

However, it did not affect the existence of slavery outside Britain in the colonies, nor the trade in slaves by either British subjects or foreigners. As the abolition of colonial slavery would have grave consequences for both imperial trade and colonial economies, the abolition of the British slave trade – that would directly and immediately impact only on the financial interests of British slave traders themselves and only indirectly and over a longer term on the colonial labour supply – became the abolitionist movement’s next and somewhat easier target.

The abolition of the British slave trade, including not only the actual conveyance of slaves by British subjects or in British ships, but also indirect British financial involvement in the foreign slave trade, was achieved by a series of statutes passed during the first few decades of the nineteenth century: from the Act to Prevent the Importation of Slaves (also known as the Foreign Slave Trade Act), 1806, and the Act for the Abolition of the Slave Trade, 1807, to the Act for the More Effectual Suppression of the African Slave Trade, 1824, and the Slave Trade Abolition Consolidation Act, 1824. Both of the latter two pieces of legislation declared any British subject, including any resident of a British territory or dominion or any person present there, who knowingly and willingly engaged in the trade in slaves on the high seas or anywhere where the Admiral had jurisdiction, to be guilty of piracy, felony and robbery and on conviction liable to punishment by death and the loss of property as a pirate, felon or robber at sea.

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60 (1772) Lofft 1, 98 ER 499.
61 For a highly readable analysis of this judgment, see *Wise Though the Heavens May Fall. The Landmark Trial that Led to the End of Human Slavery* (2005).
62 46 Geo III c 52, as amended by Act 46 Geo III c 119 of the same year.
63 47 Geo III c 36.
64 5 Geo IV c 17.
65 5 Geo IV c 113.
As a result of these measures, and their strict enforcement by the Royal Navy, there was a rapid decrease in the slave trade carried on under the British flag.

The abolition of slavery in British colonies was legislatively provided for only somewhat later. In terms of section 12 of the Slavery Abolition Act, 1833, slavery was abolished and declared unlawful throughout the British Empire as from 1 August 1834. The Act also sought to promote the industry of manumitted slaves by not immediately conferring freedom on them but by apprenticing them to their former owners for a further four years, the right to the services of an apprenticed slave being declared transferable. It also provided for the financial compensation of slave owners for the loss of their slaves. The Act applied to the West Indies, Canada, the Cape of Good Hope and Mauritius only and, in terms of section 69, came into operation in the latter two territories later (in the case of the Cape, on 1 Dec 1834) than elsewhere. In other parts of the Empire, though, slavery continued to exist as, in terms of section 68, the Act did not extend to “any of the Territories in the Possession of the East India Company, or to the Island of Ceylon, or to the Island of Saint Helena”.

From early on, the East India Company imported African slaves to work as agricultural and domestic labourers on St Helena, a need especially felt on an island where there was no indigenous populace that the settlers could so employ. Slaves were imported from West Africa, while some were also obtained from Madagascar or acquired from passing ships coming from there. By 1679 there were some eighty slaves on the island. After settlers were in 1693 granted permission to buy and trade in slaves on the island (according to tradition, slaves were sold in Jamestown under the trees at the top of what is today Main Street), there were both Company and private slaves, the latter owned by civilian settlers, Company employees and soldiers. In addition to slaves, there were also a few so-called Free Blacks, usually slaves who had

66 The Navy and privateers (ie, privately funded and armed warships) were given an additional financial incentive to act against British slave traders when, by an Order-in-Council of 16 May 1808, the government offered a bounty for captured slaves (£40 per man; £30 per woman, £10 per child) in lieu of prize money (see nn 112, 132 and 227 below) for the captured ship herself: while the condemned slave ship and her equipment would become the property of the British Crown, the captors of the slavers with a human cargo on board would be compensated for their efforts. See also n 135 below.

67 3 & 4 Will IV c 73, as amended in 1838 by Act 1 & 2 Vict c 19.

68 The first settler expedition was in fact instructed in 1659 to take on replenishment and provisions and also “five or six blacks or negroes, able men and women” at St Iago, one of the Cape Verde group, en route to St Helena: see Gosse (n 3) 45-46. On St Helena slavery during the Company period, see generally Royle (n 7) 84-102.

69 Gosse (n 3) 50, 79, 81 and 192.

70 Idem at 79.
obtained their freedom by converting to Christianity: they were not free in any real sense as they were still economically dependant and were employed mainly as domestic servants. By 1723, there were 224 slaves and eighteen Free Blacks on St Helena.

In 1792, fearing that the slave population might come to outnumber the European inhabitants, the further importation of slaves into St Helena was made illegal. Slavery remained permitted, although laws for the more humane treatment of slaves were passed.71 A local shortage of labour resulted in the Company importing indentured Chinese labourers from its factory in Canton in May 1810 and again in July 1811.

In 1818 the East India Company anticipated future developments. Adopting a measure similar to one passed in Ceylon, a gubernatorial Proclamation of 17 August of that year declared all children born of slave women to be free from Christmas Day. However, they were still regarded as apprenticed to the mother's owner until eighteen years of age if male, or until sixteen years of age if female.72 Existing slavery continued73 and in 1832 there were some 870 slaves on the island worth £37 639.74

In 1832, if not earlier, the Company again took an anticipatory step to hasten the process of emancipation when it granted loans to slaves to allow them to purchase their freedom from their owners.75 The intention was to have slavery on the island finally abolished by May 1836. However, the system was not without its problems76 and, given also its voluntariness, only partly successful.77

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71 *Idem* at 386-387.

72 For background to the 1818 measure, see *idem* 277-279.

73 See, eg, the advertisement (reproduced in Castell (n 21) 7) for the sale of three and the hire of eleven slaves (the hirer to provide food, clothing and medical) to take place by public auction "under the trees" on 18 May 1829, together with the sale of other goods – foodstuffs, books, materials – as well as "that celebrated English horse Blucher".

74 See the Government Notification of 26 April 1832, reproduced in Castell (n 21) 67.

75 See the Government Notification of 26 Apr 1832 (*ibid*), containing further measures to ensure the more rapid extermination of slavery on St Helena and aiming at effecting a final emancipation in five years by granting pecuniary advances to slaves to purchase their own freedom. The Notice stated that since 1826, 124 slaves had already been freed by means of Company loans. A Public Notice of 21 Jun 1832 (*idem* 72) advised slaves to appear before the last sitting of the Committee for the Valuation of Slaves so that they may be duly returned in the List of Valuation.

76 A Procl of 19 Nov 1832 (*idem* 91) suggested that as the Reporter of Emancipations experienced difficulty in recovering weekly or monthly instalments from some emancipated slaves for the repayment of their loans, the process would be promoted if those who hire or discharge emancipated slaves were to notify that fact and preserve in their hands such portions of the instalments as could be afforded by the servant, paying that over monthly to the Reporter. A Procl of 6 Feb 1834 (*idem* 126) warned emancipated slaves defaulting on the payment of instalments to the Company that unless the amounts due were paid in full to the Reporter of Emancipations, defaulters would immediately be apprenticed to masters; *cf* too, a Procl of 13 Mar 1834 (*idem* 132), offering such former slaves for apprenticeships.

77 Further proclamations – of 22 Apr 1833 (*idem* 101); of 24 Apr 1834 (*idem* 140); and of 27 Apr 1835 (*idem* 186) – gave effect to directions from the Company's Court of Directors to cause meetings of inhabitants of the island to be called to take ballots as to the emancipation of further sections of the remaining slaves on the island.
However, the Company’s efforts were overtaken not only by the passing of the Slavery Abolition Act in 1833, but also by the transfer of the island to the Crown in 1834.

Both these events caused uncertainty, though, and a further, final measure was required to clarify matters. Ordinance 24 of 1839, dated 27 May 1839, after mentioning the 1818 measure and the Company’s further enactments to abolish slavery on the island from 1 May 1836, referred to the fact that the Act of 1833, while abolishing slavery in British colonies, did not extend to St Helena. It observed that it was desirable that all doubts be removed as to the existence of slavery in the colony. It therefore provided that all persons, if there were any, who on the date of its publication were still in slavery, would be free and discharged of all manner of slavery and that slavery would completely and for ever be abolished and declared unlawful on the island.

3 The international background: Measures to abolish the slave trade

3.1 The rise of Mixed Commission Courts

While British municipal and colonial legislation pertaining to slavery and the slave trade signaled the beginning of the end of the transatlantic trade, the abolitionist movement and the British government realised that the abolition of the British slave trade and the end of slavery in British colonies were not enough to terminate the transatlantic slave trade. That trade was international in nature. Slave trading, transatlantic and otherwise, continued, conducted by, in particular, Portuguese, Spanish, Brazilian and American subjects, in ships flying those flags and, most heavily, from Africa to (non-British) territories in both the Caribbean and on the American continent.

The prohibition of British participation, including the use of British ships, in the slave trade quickly resulted in that trade shifting to ships flying foreign flags. Britain’s initial reliance on existing, customary international law, involving her unilateral enforcement of belligerent rights of war, including the right of search

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78 For a reproduction, see idem 265.
79 What follows is a rather simplified and generalised account of what happened. For more detail on the international perspective of slave-trade abolition, including references to numerous further sources, see Van Niekerk “British, Portuguese, and American judges in Adderley Street: The international legal background to and some judicial aspects of the Cape Town Mixed Commissions for the Suppression of the Transatlantic Slave Trade in the nineteenth century (Parts 1, 2 and 3)” 2004 CILSA 1-39, 196-225 and 404-435. And see now also Martinez “Antislavery courts and the dawn of international human rights law” 2008 Yale L J 550-641.
80 Most pertinently expounded in the Privy Council decision in The Amedie (1810) 1 Acton 240, 12 ER 92, on appeal from the Tortola Vice-Admiralty Court.
The role of the Vice Admiralty Court at St Helena

and detention of foreign vessels – an enforcement made possible by her naval superiority and the involvement of British Vice-Admiralty Courts exercising their prize jurisdiction to condemn captured slavers as prizes of war – proved, in the long run, politically and diplomatically just too controversial. The argument that slave ships were waging war against humanity and thus breaching British belligerent rights, or that the trade could be considered an act of piracy in customary international law and that on that basis British naval vessels could search and detain them on the high seas and bring them for adjudication before her own Admiralty courts to be condemned as prizes of war, ultimately failed. Many nations, at least formally in terms of their municipal laws, still regarded slavery as legal and therefore objected to British naval intervention as a breach of what they considered customary international law to be and of their rights to trade and freely engage in international economic activity. Unilateral action came to an end when, in 1817, British courts themselves came to accept that much.81

During the initial period of British unilateral action, some 184 slave-trade cases were adjudicated in British Vice-Admiralty Courts on both sides of the Atlantic. The most active of these courts was that established in Freetown, Sierra Leone.82

Acting alone, Britain and her colonies would not bring the pernicious trade to an end. International cooperation, and, more importantly, a change in customary international law, would be required and Britain would have to take the lead to attain that by relying on conventional international law.83

The mechanics of British efforts to abolish the international trade in slaves were built on four separate but interdependent pillars: diplomatic (involving the conclusion of bilateral international treaties for the abolition of the slave trade), naval (involving the physical enforcement of those treaties), judicial (involving their legal enforcement), and humanitarian (involving the care and repatriation of slaves liberated in the process).

81 See the decision of the High Court of Admiralty in The Louis (1817) 2 Dods 210, 165 ER 1464, on appeal from the Vice-Admiralty Court in Freetown, Sierra Leone. It held that customary international law did not permit Britain’s exercise on the high seas of a right of search of a vessel flying a foreign flag in a time of peace, the only exception being in the event of pirates, which slavers were not under customary international law, even if they were so considered by British municipal law. It further decided that British municipal law could not affect the rights of foreigners if inconsistent with such international law. For additional details, see Van Niekerk (n 79) 7-15; Martinez (n 79) 563-569.

82 See Martinez (n 79) 565-567. On the Sierra Leone Court, see Helfman “The Court of Vice-Admiralty at Sierra Leone and the abolition of the West African slave trade” 2006 Yale LJ 1122-1156 and further par 3 3 below.

83 See Van Niekerk (n 79) 15-21; Martinez (n 79) 569-579.
The process, in essence, involved Britain concluding treaties with other maritime powers engaged in the slave trade, something often only accomplished after intense diplomatic negotiation, political pressure, and financial persuasion.

In terms of those treaties, the parties’ naval authorities, properly authorised, would, despite the fact that no state of war existed between them, exercise reciprocal rights of interception, visit and search of each other’s merchant ships. Ships that could therefore be visited and searched were those either flying the flag of one of the contracting parties or, practically, ships not displaying any national colours at all, for then no other state could object. The searches allowed by the treaties were subject to strict rules and only permitted for purposes of the abolition of the slave trade. Some of the treaties either contained no geographical limitation, so that the conventional right of search, like the customary belligerent right of search in time of war, was exercisable on the high seas generally, but not, for instance, in ports or in waters adjacent to ports. Other treaties imposed a geographical limitation in that searches were permitted only in certain areas or for slaves shipped from or to specified prohibited locations.

Any such ships found to be or suspected of contravening the provisions of the relevant abolition treaty could, in accordance with some treaties, be seized and brought before bilateral international courts, known as Mixed Commission Courts, for adjudication. If condemned, the slave ships would be forfeited to the contracting parties and the slaves, if any on board, would be liberated. In terms of other treaties, again, such ships were merely handed over by the captor to the vessel’s national authority for adjudication in a prize or maritime tribunal of the state under whose flag she had sailed.

In terms of earlier treaties, the actual presence of slaves on board the ship searched and detained was required before condemnation could follow; evidence of past or intended slave-trading activity or involvement, however strong, was not sufficient. In later treaties the scope for detention and condemnation was enlarged in that clear and uncontroverted proof of the previous presence of slaves on board sufficed. A further refinement was the

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84 Not only with them, though, for Britain also signed treaties with local African chiefs to cut off the supply of slaves from the interior to barracoons (ie, protected courtyards containing marketable slaves: see Helfman (n 82) 1134 n 39) or slave factories on the coast or on inland rivers from where European, South American and other traders were supplied.

85 For a description of their common features, on which the following summary is based, see Van Niekerk (n 79) 18-19.

86 This was the position with the majority of bilateral slave-trade abolition treaties, but they were mainly with nations not greatly involved in the trade.
inclusion in (often re-negotiated) treaties of so-called "equipment clauses" so that the presence of specified slave-trading equipment with a view to the future conveyance of slaves was considered \textit{prima facie} sufficient to detain and condemn a ship. So, suspected slavers could be detained not only if they actually had slaves on board at the time, but also in appropriate cases prior to the shipment of slaves on board or even after the landing of slaves at their destination.

One problem with these individual, bilateral treaties was that it took some time for them to be refined such as to confer an effective right of search and seizure and to ensure that the existing loopholes, actively exploited by slave traders, were closed. Another problem was that as soon as Britain concluded a treaty with one nation, the conduct of the slave trade invariably moved from ships flying the flag of that nation to a flag outside the scope of conventional international law. Given the practical unattainability at the time of an encompassing multilateral slave-trade convention, the process of creating sufficient individual treaties – a web of individual treaties covering the whole trade – took a long time to attain the success of a final and effective abolition.

And in the time it took to renegotiate treaties and to extend the net of existing treaties, British Vice-Admiralty Courts – whose role as enforcement agencies in cases covered by the various treaties were taken over by the international Mixed Commission Courts – were again employed. More about this shortly.

From 1814, Britain had concluded a number of bilateral treaties of various kinds with a range of maritime states and their colonies. The conclusion of effective treaties with other naval powers, and in particular with Portugal and Brazil, proved more problematic and those nations remained outside the scope and reach of conventional international law. In the case of Portugal, earlier, preliminary though limited and largely ineffective treaties resulted in unilateral if illegal British pressure on the Portuguese government to get it to agree to a more encompassing treaty. That took the form of the Slave Trade (Portugal)
Act, 1839,\(^{92}\) also known as Lord Palmerston’s Act, a measure aimed at vessels carrying on the slave trade under the Portuguese flag or stateless vessels, that is, vessels not displaying or claiming the protection of any flag. The Act empowered the adjudication of such vessels before and their condemnation by British Vice-Admiralty Courts, rather than by existing Anglo-Portuguese Mixed Commission Courts, as if they were British vessels.

In the years after 1839, Portuguese-flagged slave vessels were captured by British cruisers and condemned either in Mixed Commission Courts other than those run jointly by Britain and Portugal\(^{93}\) on the basis that under international law they actually belonged to another nation, or, more usually, in a British Vice-Admiralty Court in terms of Lord Palmerston’s Act.\(^ {94}\)

Although Lord Palmerston’s Act was a measure not only in contravention of customary and conventional international law, but also probably of British municipal law,\(^ {95}\) it was largely successful. Not only did Portugal agree to a more effective abolition treaty in 1842,\(^ {96}\) but, having herself passed municipal legislation in 1836 abolishing the Portuguese slave trade, Portugal too became more pro-active. She not only enforced the new treaty but also prosecuted Portuguese nationals and condemned Portuguese ships caught by her own naval vessels in coastal waters in her municipal courts. Britain gave effect to the treaty of 1842 by repealing Lord Palmerston’s Act as far as Portuguese vessels were concerned.\(^ {97}\) However, the measure remained effective for stateless vessels and its example served for similar unilateral British action against Brazil.

\(^{92}\) 2 & 3 Vict c 73.

\(^{93}\) For instance, in the Anglo-Spanish Mixed Commission Court in Sierra Leone 1819-1865 (there was also one in Havana, Cuba), which was very active especially in the 1840s and 1850s (it heard 314 cases in 1845-1848 alone: see further Amalte Barrera “El tribunal mixto Anglo-Español de Sierra Leona: 1819-1865” 1985 Guardemos de Historica Moderna y Contemporánea 197), or in the Anglo-Brazilian Mixed Commission Court in Sierra Leone 1826-1845 (there was also one in Rio, the Anglo-Portuguese Court there having being converted into an Anglo-Brazilian one).

\(^{94}\) Martinez (n 79) 623.

\(^{95}\) At least as expounded in the decision in The Louis: see again n 81 above.

\(^{96}\) Thus, it contained an equipment clause and expanded the number of Anglo-Portuguese Mixed Commission Courts: although such courts no longer sat in either Sierra Leone or Rio de Janeiro, new ones were established and sat in Cape Town 1843-1870 (Cape Town being closer to Portugal’s territories in Africa: on the Cape Town Anglo-Portuguese Court, see further Van Niekerk (n 79) 404-427); in Spanish Town, Jamaica, 1842-1851; in Luanda, Angola, 1842-1870; and in Boa Vista, Cape Verde Islands, 1842-1851.

\(^{97}\) See the Suspension of the Slave Trade (Portugal) Act [Lord Palmerston’s Act] 1842 (5 & 6 Vict c 114), repealing so much of that Act as related to Portuguese vessels, and the Act for Carrying into Effect the Treaty (between Britain and Portugal) for the Suppression of the Traffic in Slaves, 1843 (6 & 7 Vict c 53).
Although Brazil was initially part of the network of British-instigated abolition treaties, problems soon arose. The British response was for the most part similar to the steps it had taken against Portugal, with largely the same outcome.98

As a Portuguese colony, the early Anglo-Portuguese abolition treaties also applied to Brazil, at least until she declared her independence in 1823. Then came an ineffective and limiting Anglo-Brazilian treaty of 1826 – it closely followed the unsatisfactory Anglo-Portuguese treaty of 1817 – that Brazil had signed under strong British political pressure in exchange for the latter’s recognition of her independence from Portugal. However, Brazil did little to suppress the slave trade. In 1845, Brazil considered the treaty of 1826, as well as the Anglo-Brazilian Mixed Commission Courts established under it,99 as lapsed by relying on a technical but quite legal loophole the treaty contained.100 British attempts at the negotiation of a new, expensive treaty, containing, for instance, no geographical limitations and an equipment clause, proved unsuccessful. That, coupled with what was perceived to be Brazilian tardiness in extinguishing slavery itself, prompted unilateral British action.

Britain thus passed the Slave Trade (Brazil) Act, 1845,101 also known as Lord Aberdeen’s Act. It conferred on British naval vessels the unilateral right to search and detain Brazilian and stateless or unflagged vessels engaged in the slave trade, whether or not they had slaves on board at the time and wherever such vessels were found on the high seas. Detained ships could be brought before British Vice-Admiralty Courts which were given jurisdiction to try them for piracy as if they were British vessels. The Act also exempted British naval commanders from vexatious law suits by the owners of slavers and also provided for the distribution of prize money among captors.

Increased naval action and legal enforcement in terms of Lord Aberdeen’s Act against Brazilian slave vessels, both in Brazilian waters and off Africa, had the desired effect. The trade of slaves under the Brazilian flag was largely

98 See further Van Niekerk (n 79) 25-26 n 105, 30 n 127, and 211 n 76; Martinez (n 79) 624-626.
99 These courts, which sat in Freetown and Rio de Janeiro, had in any event never operated smoothly, especially as British judges had adopted the creative interpretation of existing treaties to cover ships merely equipped for the slave trade but not yet or no longer loaded with slaves. Brazil had consistently refused to ratify a new treaty to that effect and Brazilian judges were probably correct in opposing their British counterparts on this point: see further on this issue of innovative British interpretation of abolition treaties, Martinez (n 79) 590-591, 612-613 and 625.
100 The Anglo-Brazilian treaty incorporated a number of provisions of the Anglo-Portuguese treaty of 1817, including one that had authorised Mixed Commission Courts only for a period of fifteen years after the initial abolition of the slave trade by the contracting parties, which in the case of Brazil was 1830.
101 8 & 9 Vict c 122.
suppressed. Brazil herself was forced to pass further municipal legislation in 1850 to suppress Brazilian involvement in the slave trade and to start clamping down on slaving vessels flying the Brazilian flag. As a result, Britain suspended Lord Aberdeen’s Act in 1852.

Because of both Lord Palmerston’s Act and Lord Aberdeen’s Act, there was a dramatic increase in the activities of British Vice-Admiralty Courts from the end of the third decade of the nineteenth century, at least of those in close proximity to where Portuguese and later Brazilian slave ships – and, continuously, stateless vessels – were captured by British cruisers.

Playing a cardinal role in this regard, was the Vice-Admiralty Court in Freetown, Sierra Leone, to which I will return shortly.

3.2 The resurgence of Vice-Admiralty Courts

Generally speaking, Vice-Admiralty Courts played a prominent role in Britain’s attempts at suppressing the international slave trade in the period before 1820, and again from 1840 onwards.

Two important points should be made about these courts and their role in the abolition of the slave trade.

First, Vice-Admiralty Courts were British courts, not colonial courts. Although located in a particular colony, and staffed by the same officials as functioned in the local civil courts – the Chief Justice of the local Supreme Court was usually ex officio also the Judge of the local Admiralty Court – they were but a local extension of the High Court of Admiralty in London. As such they applied not local, colonial law, but English maritime and prize law. The fact that that law was largely influence by civil law, as opposed to English common law, and also contained, especially in prize matters, strong elements of international law, further did not mean that Vice-Admiralty Courts were international courts.

102 Slavery in Brazil itself was abolished only in 1888.
103 It was only finally repealed much later by the Slave Trade (Brazil) Repeal Act, 1869 (32 & 33 Vict c 2) when Britain was finally convinced that there would be no resumption of the Brazilian slave trade.
104 See par 3.3 below.
105 The graphs developed by Martinez (n 79) 598 show that Vice-Admiralty Courts were active pre-1819, and again from the late 1830s until the mid-1860s: Commission Courts were active from 1819 to the mid-1840s. There was thus an overlapping period of activity in the late 1830s to the mid-1840s.
They were and remained British courts, and as such not, or not always, acceptable to other nations for the resolution of disputes of international law.\(^{106}\)

Secondly, the specific jurisdiction exercised by Vice-Admiralty Courts in matters of slavery was their prize jurisdiction – they also exercised a commercial, instance jurisdiction – and in such matters the procedure followed was, as will be shown shortly, akin to that in prize cases generally.

Vice-Admiralty Courts exercised their jurisdiction in slave cases both before the emergence of international Mixed Commission Courts, in the first two decades of the nineteenth century, and again when, by the end of the third decade, Britain turned to them to supplement her efforts at abolition in those cases in which an international, cooperative solution proved elusive.\(^{107}\) However, while they may not actually have exercised their jurisdiction in slave cases during periods when, or in cases in which, Commission Courts were available and operative,\(^{108}\) Vice-Admiralty Courts always, throughout the nineteenth century, possessed such jurisdiction, one that could and occasionally was exercised alongside that of Commission Courts.

Unlike the Commission Courts, whose jurisdiction depended on the scope of the particular abolition treaty under which they were established,\(^{109}\) Vice-Admiralty Courts’ slavery jurisdiction, like its prize jurisdiction, was in theory virtually unlimited, both geographically (all captures on the high seas) and personally (over all enemy property). It was a different matter, though, whether

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\(^{106}\) There is a mass of material on Vice-Admiralty Courts. Useful starting points include Crump *Colonial Admiralty Jurisdiction in the Seventeenth Century* (1931); Harrington “The legacy of the colonial Vice-Admiralty Courts (Part I)” 1995 *J of Maritime Law and Commerce* 581-600 and Harrington “The legacy of the colonial Vice-Admiralty Courts (Part II)” 1996 *J of Maritime Law and Commerce* 323-351; Roscoe *A Treatise on the Jurisdiction and Practice of the Admiralty Division of the High Court of Justice and on Appeals therefrom with a Chapter on the Admiralty jurisdiction of the Inferior and the Vice-Admiralty Courts* (1878). See also Smith “Admiralty jurisdiction in the dominions” 1926 *SALJ* 170-178 (reprinted from the *Law Quarterly Review*); and Van Niekerk ‘The Natal Vice-Admiralty Court: A brief historical introduction with specific reference to its constitutional ‘crisis’ of 1864’ 2004 *Fundamina* 224-268.

\(^{107}\) Mixed Commission Courts were most active from 1819 to the mid-1840s, reaching the peak of their effectiveness in terms of case volume in the late 1830s and early 1840s; see Martinez (n 79) 621.

\(^{108}\) Thus, Edwards *A Treatise on the Jurisdiction of the High Court of Admiralty of England* (1847) 210 explained that the jurisdiction in questions relating to the condemnation of vessels engaged in the slave trade “has in great measure been removed from the Vice-Admiralty Courts, by several treaties concluded between England and several foreign states, to Courts acting under commissions from the different governments, called Mixed Commission Courts”, although the High Court of Admiralty did retain the power to enforce the decrees (which were final, not appealable) issued by those Commission Courts and also the power to determine claims relating to prizes and bounties arising from British captures in terms of such treaties.

\(^{109}\) See again at n 86 above.
Britain would exercise that jurisdiction, on the one hand, and whether other nations would accept its exercise of that jurisdiction,\(^\text{110}\) on the other hand.

Practically British Vice-Admiralty Courts exercised their jurisdiction and tried slavers in the following type of slave cases:\(^\text{111}\)

- cases of British slavers captured and detained by British cruisers;\(^\text{112}\)
- cases involving the British capture of suspected slavers belonging to a state with whom Britain had not (yet) concluded an abolition treaty;\(^\text{113}\)
- cases of the British capture of suspected slave ships belonging to a state with whom Britain did have an abolition treaty, but which treaty had either been terminated and the relevant Mixed Commission Courts closed down, or which Britain chose to ignore;\(^\text{114}\) and
- instances of the British capture of stateless slavers, that is, ships either actually belonging to no state at all or concealing their nationality and professing not to belong to any state.

Mixed Commission Courts and Vice-Admiralty Courts therefore exercised if not overlapping and potentially conflicting jurisdictions, then at least analogous and complimentary jurisdictions. Cases heard by the Vice-Admiralty Courts were, generally speaking, those falling outside the scope of any existing abolition treaty and the jurisdiction of the Mixed Commission Courts, if any, established under such treaty; cases not, not yet, or no longer within the scope of any such treaty. But then the precise scope of their jurisdiction remained fluid – as new treaties were concluded, or existing ones expanded or withdrawn from – and its exercise controversial and, arguably justifiably, considered by other nations as in contravention of customary international law.\(^\text{115}\)

\(^{110}\) Or, put differently, whether they would accept her definition of what amounted to an “enemy” for purposes of the exercise, under customary international law, of the belligerent right of search and seizure.

\(^{111}\) For the jurisdiction of Vice-Admiralty Courts over slave-trade captures, see further Van Niekerk (n 79) 209-214.

\(^{112}\) This was in terms of British municipal legislation that had declared such slave trading to be piracy: see again at n 65 above.

\(^{113}\) The main examples here were Arab dhows and American slave ships, although Britain’s right to search and seize the latter was strongly opposed: see further Van Niekerk (n 79) 427-429 and par 4 2 4 (6) below on the Anglo-American position.

\(^{114}\) The prime examples here, as explained earlier, were Portuguese vessels after 1839 and Brazilian vessels after 1845, in respect of which Britain had started exercising Admiralty jurisdiction in terms of Lord Palmerston’s Act and Lord Aberdeen’s Act respectively.

\(^{115}\) Apart from the issues of international law, already alluded to earlier, there were concerns about the possibility of bias in a British court adjudicating a British capture (by far the most captures of slave-trading vessels were made by the Royal Navy), and also about the fact that in condemning a foreign vessel and liberating any slaves on board, certain advantages (eg, the proceeds of the sale of the condemned vessel and the labour of the liberated but practically still indentured slaves) accrued to Britain.
Nevertheless, British Vice-Admiralty Courts played a crucial and indispensable role in her continuing attempts to suppress the international slave trade and in their eventual success. Two of them, in particular, were prominent in the 1840s, that in Freetown, Sierra Leone, and that on the island of St Helena.116

3 3 The Vice-Admiralty Court in Sierra Leone117

A Vice-Admiralty Court had been established in Freetown, Sierra Leone, on the west coast of Africa, in 1807, around the time the territory became a Crown Colony. That occurred after a privately sponsored humanitarian experiment to establish a settlement there in 1787 for free blacks from England and elsewhere in the Empire, foundered, and also because Britain did not want to lose her strategic naval base there.118 Sierra Leone remained a settlement for liberated slaves, a free territory on a slave coast where not only the trade in slaves but slavery itself were prohibited.119

Freetown was a logical site, therefore, for the establishment of not only a British Vice-Admiralty Court but also, later, various Mixed Commission Courts in terms of abolition treaties Britain had concluded to adjudicate slave-trade matters. It was also the ideal place to free rescued slaves.120

When first established, it seems, the Sierra Leone Vice-Admiralty Court was clothed with but a limited prize jurisdiction, namely one confined to the

prosecution and That only of captured slaves seized or taken on or near the Coast of Africa together with the Ships vessels or Boats in which they shall be so seized and taken and all the Goods Wares Merchandize and effects found on board the same.121

It was established merely to give effect to the Act for the Abolition of the Slave Trade, 1807, and then only in so far as the slave vessels brought before it actually had slaves on board when captured. However, its jurisdiction was geographically unlimited (to British captures anywhere) and there was also no

116 See also Adderley “New Negroes from Africa”. Slave Trade Abolition and Free African Settlement in the Nineteenth-Century Caribbean (2006) 72, explaining that as the Mixed Commission Court system fell into decline by the end of the 1830s – partly because of the success of some treaties in eradicating the slave trade under certain flags, partly because of the expiration or alteration of some of the treaty arrangements involved, and partly because of the disinclination among contracting parties to maintain the complexities of joint law enforcement – most (of the remaining) slave-trade cases again ended up in British Vice-Admiralty Courts, usually in Sierra Leone or on St Helena.

117 See in particular the useful introduction by Helfman (n 82) whose piece unfortunately does not make reference to the indispensable materials contained in BPP: ST and further contains a number of inaccuracies on the role and function of British Vice-Admiralty Courts.

118 Idem 1130.

119 See further generally idem 1127-1131.

120 Adderley (n 116) 26.

121 See Helfman (n 82) 1131-1132 where the Letter Patent establishing the Court is quoted.
limitation on the nationality of captured ships that could be adjudicated. It even heard cases with a close link to St Helena.\textsuperscript{122}

The Court’s first and temporary Judge was Alexander Smith, a former storekeeper of the Sierra Leone Company who not only had little legal knowledge, but was quite prepared himself to purchase the very property he had condemned as prizes. Robert Thorpe, a lawyer and devoted abolitionist, took over as the first proper Judge\textsuperscript{123} of the Sierra Leone Vice-Admiralty Court in 1808. Failing clear instructions from London – other than that he had to give effect to statutes and treaty provisions, and had to confer on the latter precedence in the event of any conflict – and given the rather vague and limiting jurisdiction conferred by the Court’s establishing Letter Patent, Thorpe nevertheless employed the Vice-Admiralty Court to play a leading role in enforcing the Act of 1807. He heard slave cases not only against British traders, but also considered foreign slave traders as coming within the realms of Admiralty prize jurisdiction, so circumventing the prevailing view of the customary international legal regime governing free trade and navigation.\textsuperscript{124}

Ultimately, though, in 1817, his innovative approach was disapproved of by the High Court of Admiralty in London\textsuperscript{125} and the expansive powers and jurisdiction he had exercised cut down.

In the following period, the Mixed Commission Courts established at Freetown, Sierra Leone, under the various abolition treaties Britain had signed came to the fore. Freetown was chosen by Britain as the location for a large number of these courts not only because a Vice-Admiralty Court had long been

\textsuperscript{122} In \textit{The Dolores} (1819) 2 Dods 413, 165 ER 1531, the issue arising for determination concerned the entitlement of a flag officer to a share of the proceeds of a condemned ship and her stores and also of the bounty given for the seizure of some 250 slaves on board. The captured slaver in question had been taken to Sierra Leone for adjudication and was there eventually condemned, probably by the local Vice-Admiralty Court. The St Helena connection? The slaver had been captured in Apr 1816 by a naval vessel, the \textit{Ferret}, under the command of James Stirling. The \textit{Ferret} was part of a squadron that, under the orders of Rear-Adm Sir George Cockburn, had conducted Napoleon to St Helena (see again n 9 above). She remained under his orders there until, in 1816, she was sent to Spithead with dispatches for the Admiralty. She captured the slaver en route from St Helena to Spithead, but had no orders from Cockburn to capture such vessels and the capture further took place outside the limits of the Admiral’s station. The High Court of Admiralty in London held Cockburn entitled to a distributive share of one-eighth of the bounty money given for the slaves.

\textsuperscript{123} Thorpe was appointed as Chief Justice of the Sierra Leone Supreme Court – not as Chief Justice of the Vice-Admiralty Court as Helfman (n 82) has it at, eg, 1124 – and in that capacity, as “Chief Civil Judge”, he was \textit{ex officio} also “Judge” of the Vice-Admiralty Court there: that much appears from the Letter Patent establishing the Vice-Admiralty Court quoted by Helfman at 1132 n 30.

\textsuperscript{124} In the period 1808-1815, the Court adjudicated more than 200 Spanish slavers, and in the period 1807-1811 it liberated around 1,990 slaves: see Helfman (n 82) 1143.

\textsuperscript{125} His decision \textit{a quo} in \textit{The Louis} (n 81) was overturned by the High Court of Admiralty (see Helfman (n 82) 1151 n 113); and not by the Lords Commissioners of Prize Appeal (\textit{idem} 1138 n 55) nor by the Prize Court of Appeals (\textit{idem} 1150 n 109).
operational there and because the territory was already established as a settlement for liberated slaves, but also for reasons of economy: centralizing those Commission Courts that had to be in a British territory in one location, meant that they could all be operated by a single set of British officials. Also, Freetown, where a preventative squadron of British naval cruisers was stationed, was at the time conveniently close to the places along the coast from where the slaves originated and where those cruisers came across and captured slave ships.126

The various Freetown Mixed Commission Courts were by far the most active, effective and efficient of all such courts in the abolition of the slave trade.127 Also, as Sierra Leone was not a slave-holding community but a liberated slave settlement, local conditions were much more humane both for slaves awaiting adjudication and for those already set free.128

However, as explained earlier, the case load of the individual Commission Courts decreased as the treaties on which they were based, achieved success. The slave trade moved to flags not covered by abolition treaties, mainly to the Portuguese and later the Brazilian flag. Accordingly, the Sierra Leone Vice-Admiralty Court again started playing a more prominent role as British cruisers brought increasing numbers of such vessels before it for condemnation. Apart from Portuguese slavers in the period from 1839 to 1842, and Brazilian vessels after 1845, an ever larger number of stateless vessels129 came before it. The reason was that the owners, captains and crews of slave ships preferred to disavow any nationality and to appear before a British Vice-Admiralty Court, which exercised no criminal jurisdiction over them personally, rather than

126 See Van Niekerk (n 79) 197-199.
127 Thus, it has been estimated that from 1819 to 1845, 528 vessels were adjudicated by those courts in Freetown, of which some 484 were condemned and only twenty nine restored to their owners. In Havana, eight were condemned and seven released; in Rio de Janeiro, twenty five were condemned and six released; in Luanda five were condemned and six released, and in Cape Town all five cases resulted in condemnations. In excess of 65 000 slaves were emancipated by the Freetown courts (as against some 10 000 in Havana and 3 000 in Rio de Janeiro). For these and other figures, see Martinez (n 79) 590, 595 and 596.
128 The Mixed Commission Courts at Freetown often successfully petitioned the governor to allow slaves on slave ships brought in for adjudication, to disembark pending the conclusion of proceedings; elsewhere (in Havana and Rio de Janeiro) that was regarded as too much of a security risk and slaves spent anything from a few days to several weeks in ships offshore, resulting in further fatalities; see Martinez (n 79) 584, and also Little “The significance of the West African Creole for Africanist and Afro-American Studies” 1950 African Affairs 309 at 310. While slaves freed by the Commission Courts in Havana and Rio de Janeiro – so-called emancipados – were often for all practical purposes almost immediately re-enslaved (eg, by virtue of being kept in repeatable and repeated apprenticeships), in Sierra Leone liberated slaves could remain there and did not have to be repatriated or transferred elsewhere with the attendant fatalities and risk of recapture that that involved: Martinez (n 79) 617-618.
129 These were either actually stateless or preferred to be regarded as such by not displaying – and often throwing overboard before being captured – any colours or papers identifying their nationality.
before Mixed Commission Courts which, although likewise exercising no criminal jurisdiction, were obliged, at least in theory, to hand them over to their own authorities for criminal prosecution.130 And, in any event, it was well known to (British) captors that they were assured in Admiralty courts, not being hampered by the jurisdictional, compositional and jurisprudential difficulties besetting the operation of Commission Courts, of an efficient and speedy resolution of disputes and declaration of their entitlement to prize money and bounty money. During the period from 1840 to 1848, around 150 slave-trading vessels were taken to the Sierra Leone Vice-Admiralty Court where, generally, they were condemned.131

Nevertheless, despite its advantages, the operation of the Sierra Leone Vice-Admiralty Court was not without its problems. The unhealthy climate132 and rife local corruption apart,133 Freetown increasingly became geographically inconvenient. British naval cruisers were under instructions to send captured slave ships to the nearest Mixed Commission Court or Vice-Admiralty Court, as the case may be. Until the 1840s that meant Freetown. However, as British abolition measures started achieving success, the trade moved away, ever further south and, also, to the Indian Ocean. Vessels were captured further and further away from Sierra Leone. That created severe logistical difficulties for the captors who had to put a prize crew on the captured ship and send her for adjudication. No doubt the longer voyages required before slaves could be taken off the ships was also a factor.

As the volume of cases arising on the African side of the Atlantic and destined for adjudication by Vice-Admiralty Courts rather than by Mixed Commission Courts, if any, increased,134 the solution135 was to establish a Vice-Admiralty

130 Frequently though, slave-ship crews were immediately released locally and were soon again employed in the trade as Mixed Commission Courts thought that they had no authority to hold such crews in custody until they could be turned over: see Martinez (n 79) 591. Later, though, such authority came to be acknowledged by the governments involved: idem 613.

131 See Helfman (n 82) 1143. For comparative percentages of slave cases heard in Mixed Commission Courts and in Vice-Admiralty Courts, see Martinez (n 79) 597-599.

132 The malaria-ridden settlement was widely known as “the white man’s grave”: in the period between 1792 and 1814, there were no less than seventeen changes of governorship in the territory, largely because of the decimation caused by disease in the gubernatorial rank.

133 Many local merchants including, very often, governors, were in one way or another interested in slave-trading, in obtaining the labour of liberated slaves as apprentices, and in buying at favourable prices any slave ships and other property that were condemned: see Helfman (n 82) 1144-1145.

134 Thus, cases involving, first, Portuguese and, later, Brazilian slave ships, as well as, generally, those concerning stateless slavers.

135 A similar one had also been mooted much earlier: there had been a proposal in the 1820s to transfer Mixed Commission Courts involving Britain from Freetown to Clarence Town on the island of Fernando Pó, an island off the west coast of Africa in the Gulf of Guinea, further south along the African coast from Freetown. It not only had a milder climate, but was also closer to existing slave-trade routes and points of embarkation on the coast. Britain also leased bases on the island for her naval anti-slavery patrols from 1827 to 1843; However, that translocation never materialised and the plan was abandoned in 1832.
Court more conveniently located: 46 on the island of St Helena, where, crucially, there was already an established naval presence. 47

4

The Vice-Admiralty Court of St Helena

4.1 The establishment of the St Helena Vice-Admiralty Court 138

Although it would on occasion in the past have been useful had there been an Admiralty Court on the island of St Helena, 139 a fact attested to by a number of maritime cases, both prize matters 140 and instance matters, 141 originating at or

136 The same movement south is also noticeable in the establishment of further (Anglo-

137 In the nineteenth century, there were several British naval stations in the Atlantic, both on

138 The Vice-Admiralty Court’s Assignation Books, in two volumes 1839-1841 and 1842-1851

139 For instance, eight Dutch ships were brought to anchor in James Bay as prizes in 1795

140 See, eg, (1) The Odin (1803) 4 C Rob 318, 165 ER 625, a case of alleged joint capture and

141 See, eg, (1) The Odin (1798) 1 C Rob 248, 165 ER 166: a British ship trading with the enemy is subject to capture as an enemy ship – captured out of the limits of Jamestown harbour in Aug 1798 by a naval man-of-war; (2) The Richmond (1804) 5 C Rob 324, 165 ER 792, a case of an American slave ship arrested as a prize in port on the orders of the governor of St Helena and sent to England for legal adjudication where the legality of the capture and the effect on the legal position of the subsequent conduct of the governor in dealing with the master and agreeing to buy the vessel’s contraband cargo on board arose for determination; held (at 336-337, 796) that the governor’s conduct did not affect the legal position as “no act of this gentleman, in the capacity of an officer of the East India Company’s settlement at St Helena, could dispossess the King and defeat his title to confiscation which had already


having strong links to the island but eventually ending up being adjudicated in London, there was no real need for such a Court until that was provided by Britain’s campaign to abolish the slave trade.

A statement commonly found in most general works on the history of St Helena is that in 1840 the British government established a Vice-Admiralty Court on the island for the trial of vessels engaged in the slave trade from the African coast and brought there for adjudication by the naval cruisers that had intercepted and seized them, and also for the liberation of the slaves on board such vessels.\(^\text{142}\)

However, the establishment of the St Helena Vice-Admiralty Court did not take place as smoothly as that simple statement would have one think.

\(^{141}\) Thus, (1) in *Unwin v Wolseley* (1787) 1 TR 674, 99 ER 1314 there was a claim for freight in terms of a charter party made at St Helena in respect of a prize ship. As there was no Vice-Admiralty Court there, the claim had to be brought in the High Court of Admiralty in London which held that the claimant had not established the authority and competency of the Commissioners at St Helena to have condemned the vessel as a prize so as to enable her to be chartered out by the captor. The Commissioners in question were described (at 674-675, 1315) as having been "appointed according to the Royal charters under the Great Seal, confirmed by several Acts of Parliament, for the purpose of distributing justice in all maritime cases whatsoever concerning any ships which might be brought, or persons who might come, within the jurisdiction of the powers delegated for the government of the island of St Helena". The Court agreed with the captor that it did not appear that the ship had lawfully and in proper form been condemned as a lawful prize in any of His Majesty’s Courts of Admiralty in Great Britain or in the plantations in America or elsewhere, or in any other court having competent jurisdiction. On her capture, the ship had to be sent to a Court of Admiralty for condemnation, until which time she remained the property of the Crown. The Commissioners here had no authority to determine questions of prize and no right to condemn the ship to the captor "for there was no Court of Admiralty at St Helena" (at 676, 1315); they only had the special and limited powers delegated to them for particular purposes by the charters of the East India Company. (2) In *Heathorn v Darling, The Eliza* (1836) 1 Moore 5, 12 ER 712, Saul Solomon, a merchant of St Helena (see again n 48 above), had in Oct 1833 there taken up a bottomry bond on the *Eliza*, the sum involved being £520 at maritime interest of 7.5 per cent. That necessitated Andrew Darling, also a local St Helena merchant to whom Solomon had assigned the bond, having to bring a claim for the total amount due to him of £559 in the High Court of Admiralty in London. The latter held the bond valid and the borrower liable, a judgment subsequently reversed by the House of Lords on the basis that as there was no absolute necessity for the bond, a fact the lender exercising due diligence would have realised, the owner of the *Eliza* could not be held liable on the bond concluded by his master. (3) In *The Mona* (1840) 1 W Rob 137, 166 ER 524, as there was no Vice-Admiralty Court at St Helena, maritime claims – here a seaman’s claim for wages – like prize claims, had to be brought before the High Court of Admiralty in London. The latter held, though, that it had no jurisdiction in the matter as the claim for wages was founded not upon the usual mariner’s contract but upon a special agreement (here, concluded with the master at St Helena), so that the claim came within the jurisdiction of the common law courts which would subject the Admiralty Court to prohibition if it entertained the suit.  

\(^{142}\) Frequently it is also stated that the Court tried the crews of such slavers (see, eg, Schulenburg “Aspects of the lives of the ‘liberated Africans on St Helena’ 2003 Wirebird: J of the Friends of St Helena 18 and Smallman (n 3) 63), which was, of course, not the case as Vice-Admiralty Courts did not exercise such jurisdiction. It should also be pointed out that in many cases, as will be explained later, the vessels were destroyed and not actually but only symbolically brought in for adjudication.
Whether on instructions from London or from his own initiative is not clear, but on 24 March 1840 Governor George Middlemore issued a Proclamation establishing a Vice-Admiralty Court on St Helena.143

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143 The Proclamation is to be found in a handwritten copy in the Court’s Assignation Book, 1839-1841, and a printed version is also reproduced in Castell (n 21) 287.
He reasoned that he had the necessary authority to do so as the Crown had by Letters Patent under the Great Seal of the High Court of Admiralty appointed him as Vice Admiral of the island with the power to nominate such officers under him as he may deem necessary and requisite for the due execution his functions not only as governor but also as Vice Admiral. He accordingly gave notice that

I do hereby constitute and ordain the following Officers, to form a Court of Vice Admiralty for the Island of St Helena,

CRG Hodson, Esq – Judge
WH Seale, Esq – Registrar
Edward Gulliver, Esq – Marshal
Lieutenant-Colonel Charles Robert George Hodson (1779-1858), formerly of the East India Company’s St Helena Regiment, was a long-time resident on the island. Once the Town Major, from at least 1808 and during Napoleon’s captivity on the island, he was subsequently the Judge-Advocate of the military forces on island. Whether that, and the fact that he also served as a magistrate and sat in the local Summary Court from 1836 until 1838, meant that he had any formal legal training, is not clear. After forty two years in the service of the Company, he in 1836 received the honorary rank of lieutenant-colonel and a pension from it, but remained on the island after it became a Crown Colony, available to be appointed as the first Judge of its Vice-Admiralty Court. Married to the daughter of a local worthy, and also a member of the governor’s legislative council and a former colonial secretary, he was no doubt a respected inhabitant and eminently appointable. And Hodson himself no doubt welcomed the appointment to what would clearly become quite a busy court, for, even if the office was not salaried, he would still be entitled to a substantial amount by way of prescribed fees. Although, ultimately, Hodson was not to remain as Judge of the Vice-Admiralty Court.

144 There is a photo of him in Castell (n 56) 65.
145 See, eg, Gosse (n 3) 249; Dec 1811 St Helena Monthly Register 34 and Oct 1813 St Helena Monthly Register 23 (both the latter references are from Hearl The St Helena Monthly Register 1810-1813: A Contents List (2002), published online by the St Helena Institute at http://www.st-helena.org (14 Jul 2008)). The office of Town Major (not mayor, as some sources have it), was a military, not a civilian one.
146 See the St Helena Calendar and Directory for 1828.
147 See the St Helena Almanac for 1913; for the latter position, he received in 1840 a salary of £200; see also the gubernatorial Procl of 27 May 1838, reproduced in Castell (n 21) 244.
148 The pension amounted to £465 in 1840 and £500 in 1842, as appears from the Blue Books for those years.
149 A Procl of 27 Oct 1838 (reproduced in Castell (n 21) 248) notified that until further notice Hodson was appointed colonial secretary in the place of RF Seale (see again at n 56 above).
150 Hodson married Maria Doveton (1883-1857) in 1803. She was one of the daughters of Lieut-Col Sir William Webber Doveton (1753-1843), a writer (1769) and later paymaster in the employ of the East India Company, Sheriff (1789), and a member of the local governor’s council (1808). Sir William famously had a picnic-breakfast with Napoleon on the lawn in front of his house at Sandy Bay in Oct 1820, on one of the former Emperor’s last excursions before his death. Napoleon was also said to have taken a liking to Hodson, a lanky figure, calling him “Hercules”. He had invited Hodson and his wife to dinner at Longwood on 4 Jan 1818. At the exhumation of Napoleon’s remains, in 1840, Hodson was appointed an official witness. Hudson’s eldest daughter, Maria (1814-1863), married Capt Edwin Thomas Sturdee, RN. He also had another daughter, Anna Frances (d Apr 1889), whose son was Sir Frederick Charles Doveton, first baronet (1859-1925) and a naval officer (see his entry in the Oxford DNB, referring to Anna Frances as the “daughter of Colonel Charles Hodson, of Oakbank, St Helena”). For these and other snippets of information on Hodson and the Dovetons, see further Carter The Dovetons of St Helena (1973) passim; Chaplin A St Helena Who’s Who, or Directory of the Island during the Captivity of Napoleon (1914, 2 ed 1919, reprinted and retitled Napoleon’s Captivity on St Helena 1815-1921: A Comprehensive Listing of Those Present including Civil, Military and Naval Personnel with Biographical Details 2002) passim; Stewart Taylor (n 2) 59, 68 and 79; and Gosse (n 3) 279-282.
151 See the Procl of 31 Jul 1837 (reproduced in Castell (n 21) 236), notifying that Lieut-Col CRG Hodson, late of the East India Company’s Service, had been admitted and sworn in as member of the legislative council.
152 See the Procl of 27 Oct 1838 (reproduced in Castell (n 21) 248), notifying Hodson’s appointment until further notice as secretary and registrar to the government of the colony, and as treasurer, in the place of RF Seale.
Court for long, he remained on the island, serving in numerous capacities,\textsuperscript{153} until he returned to England\textsuperscript{154} where he died in Bath in 1858.

William Henry Seale, who was appointed colonial secretary in the place of his namesake Robert Francis Seale in 1838,\textsuperscript{155} was appointed as the Vice-Admiralty Court’s first Registrar, an appointment he was to occupy for two years.\textsuperscript{156} Edward Gulliver, a navy man and also harbour master in 1840, was appointed as the Court’s first Marshal, an office described as that of “a sort of marine sheriff”.\textsuperscript{157} Unlike the other two appointments, Gulliver survived the reconstitution of the Court and served in that capacity until 1851.\textsuperscript{158}

Although the Vice-Admiralty Court was soon active,\textsuperscript{159} questions were raised about the legality of its establishment and constitution. The complainant, it appears, was Chief Justice Wilde, who argued that it was against convention if not established rules that had it that the principal civil judge in a colony be appointed as the Judge of any Vice-Admiralty Court that may be established there. His concern was no doubt driven in part by an appreciation of the financial benefits to be derived from an appointment in that office: although not a salaried office – Vice-Admiralty Courts, it should be remembered, were not colonial courts but British courts operating in the colonies\textsuperscript{160} – the judgeship of the Vice-Admiralty Court did entail an entitlement to prescribed fees, payable by litigating parties, no doubt a welcome addition to the salary Wilde received as Chief Justice from the Colonial Fund.

\textsuperscript{153} See, eg, the Notice of 1 Apr 1845 (reproduced in Castell (n 21) 372) concerning the appointment of a replacement as acting Summary Judge in place of Lieut-Col Hodson who was absent on two years’ leave to England (see also BPP: Col Gen Vol 4 at 136-137).

\textsuperscript{154} He may in fact not have returned from leave: see BPP: Col Gen Vol 4 at 675 confirming the appointment of a new Summary Judge in the place of Hodson who had “resigned”.

\textsuperscript{155} See again n 57 above.

\textsuperscript{156} See SHA, Vice-Admiralty Court Correspondence Book 1842-1872, 31 Mar 1842, where there is mention of Seale tending his resignation as Registrar. The fees he received in that capacity in 1841 amounted to £138: see the Blue Book for 1841.

\textsuperscript{157} See The Rendsberg (1805) 6 C Rob 142, 165 ER 880 at 167, 889.

\textsuperscript{158} The fees he received from his office amounted to £105 7s 6d in 1842, £110 in 1843, £22 13s 6d in 1844 and £135 19s in 1847: see the Blue Books for those years.

\textsuperscript{159} See, eg, the notices by Registrar Seale dated 9 Jun, 7 Jul, 9 Jul and 28 Jul 1840 of the open court to be held on specified dates for the purpose of adjudicating upon the specified vessels captured by naval cruisers (the Water Witch and the Brisk) and brought to St Helena: the notices are reproduced in Castell (n 21) 292, 296, 297 and 298 and concern the Andorinha and the Cabaca; the Andorinha (again) and the Coringa; the Dictador; and the Maria Rita respectively. There is a transcript of a judgment dated 11 Jun 1840 in the Court’s Assignation Book 1839-1841 in which the slaver Cabaca was condemned for having slaves on board when captured by the naval cruiser Water Witch and the slaves on board emancipated. Although sailing under Portuguese colours and manned by Portuguese subjects, her papers did not sufficiently “prove her right to the protection of that Flag”.

\textsuperscript{160} This had a number of consequences, ranging from the fact that officials serving on the Court were paid not from the Colonial Funds but, if at all (ie, if not entitled to fees only), by the Admiralty, on the one hand, to the funding of the Court’s operations, on the other hand: see, eg, SHA, Secretary of State Despatches Vol 5 (1842) at 105-107, letter from Lord Stanley to Governor Trelawney, 24 Aug 1842, concerning a request for stationery for the year 1843, in which it was pointed out to the governor that there was no reason that he
As a result, Governor Middlemore wrote to London requiring clarification of the question whether, by virtue of his commission of Vice Admiral under the Great Seal, a colonial governor was authorised to constitute a Vice-Admiralty Court for the colony, or whether it was necessary for that purpose that a Commission should be issued in the usual manner by the Lords Commissioners of the Admiralty. The Secretary of State, Lord John Russell, approached the Advocate-General, Dr (later Sir) John Dodson, for an opinion on the legal position pertaining to the constitution of Vice-Admiralty Courts. In a letter dated 27 May 1840, Dodson forwarded his legal opinion.

Proclamation of 9 November 1840 confirming the legality of the Vice-Admiralty Court of St Helena

should supply the local Vice-Admiralty Court with stationery from the stock provided for the service of his government and that his request would be reduced accordingly.

Dodson (1780-1858) was a member of Doctors’ Commons 1808-1858 and its President 1852-1858, King’s Advocate 1834-1852, and also a Judge of the Prerogative Court of Canterbury 1852-1857; see Squibb Doctors’ Commons. A History of the College of Advocates and Doctors of Law (1977) 198 and Dodson’s entry in the Oxford DNB.

See SHA, Secretary of State Despatches Vol 3 (1840) at 404-411, letter from Dodson to Lord Russell, 27 May 1840.
Dodson observed that judges and other officers of Vice-Admiralty Courts were usually and properly appointed by the Lords Commissioners for Executing the Office of the Lord High Admiral. However, sometimes they were nominated by the Vice Admiral (that is, the governor) of the colony whose Patent usually if not always contained a clause empowering him to make such an appointment. In the case of St Helena, Dodson concluded, the governor was by virtue of his Commission of Vice-Admiralty under the Great Seal of the High Court of Admiralty authorised to constitute a Vice-Admiralty Court on the island.

In July, the Secretary of State forwarded the opinion to Governor Middlemore, adding, though, that it was improbable that slaves captured by naval cruisers would be landed at St Helena as the captors should be “desired” to carry them on to the Cape of Good Hope and the Vice-Admiralty Court there. However, in September, while acknowledging receipt of a letter from the governor with an enclosure of the proceedings of the Vice-Admiralty Court “which was held by your orders” on 8 June, the Secretary of State instructed the transmission of a copy of the Commission issued by the governor appointing Hodson to the office of Judge of the Vice-Admiralty Court. Governor Middlemore also had to obtain from Chief Justice Wilde a statement of the specific objections he entertained as to the legality of that Court and had to forward it to London.

Strengthened by the Advocate-General’s opinion and unperturbed by the misgivings clearly still harbouried in London, Governor Middlemore sought to put the matter to rest. By a Proclamation dated 9 November 1840, he pronounced that whereas it had been reported to him that doubts had arisen as to the legality of the Vice-Admiralty Court he had constituted for the colony by

163 Dodson pointed out that on 24 Dec 1836, the King had by Letters Patent under the Great Seal authorised and empowered the Lords Commissioners of the Admiralty to constitute and appoint a Vice-Admiralty Judge and other proper officers for a Vice-Admiralty Court at St Helena in a like manner as such judges and other officers of such courts had been constituted by the Lord High Admiral elsewhere. In the Commission which the Lords were authorised to issue, they were directed to insert all such clauses as usual in Commissions of the like nature and as they should think fit and necessary for making the said intended Commission firm, valid and effectual in law. Further, on 29 Dec 1836, the Lords Commissioners of the Admiralty, by warrant under their hands and the Seal of Office addressed to the Judge of the High Court of Admiralty, instructed him to cause Letters Patent to be issued out of the High Court of Admiralty in the King’s name for Maj-Gen Middlemore to be the Vice Admiral of St Helena in the usual manner and form. On 9 Jan 1837, such Letters Patent were accordingly issued, constituting Middlemore the Vice Admiral of the island. And by his Patent, he had the power of appointing a deputy and other officers and ministers under him for that office and its execution.

164 See SHA, Secretary of State Despatches Vol 3 (1840) at 316-317, letter from Lord Russell to Governor Middlemore, 20 Jul 1840.

165 See SHA, Secretary of State Despatches Vol 3 (1840) at 402-403, letter from Russell to Middlemore, 4 Sep 1840.

166 It is reproduced in Castell (n 21) 308.
The role of the Vice Admiralty Court at St Helena

virtue of Letters Patent under the Great Seal that had authorised the governor as the Vice Admiral to establish such a Court, its legality had been confirmed by a legal opinion from the Advocate-General. The relevant portion of that opinion was also reproduced in the Proclamation for general information.\(^{167}\)

However, within a few months London decided to intervene.\(^{168}\) At the end of June 1841, as appears from a dispatch to Governor Middlemore,\(^{169}\) the Secretary of State recommended to the Lords Commissioners of the Admiralty to take steps to have appointed by “regular” Commissions, the Chief Justice of the island of St Helena for the time being to be also the Judge of the Vice-Admiralty Court there, and for the Secretary of the Government there for the time being to be its Registrar.\(^{170}\) On 21 October, an Order-in-Council was passed to enable the Chief Justice of St Helena to hold the office of the Admiralty Judge there.\(^{171}\)

The final step was taken by the new governor, Colonel Hamelin Trelawney, who had taken office on 6 January 1842.\(^{172}\) By a Proclamation dated 20 January,\(^{173}\) he announced the appointment of His Honour William Wilde, Esq, Chief Justice, to be the Judge of the Vice-Admiralty Court of the island and

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\(^{167}\) The portion in question read:

‘Letters Patent under the Great Seal of the High Court of Admiralty were issued, constituting Major General Middlemore, Vice Admiral of St Helena. By this Patent he has the power of appointing a Deputy, and of naming, appointing, ordaining, assigning, making and consulting other necessary, fit and convenient Officers and Ministers under him, for the said Office and execution thereof. I am therefore of opinion, that the Governor of St Helena, is by virtue of his Commission of Vice Admiral, under the Great Seal of the High Court of Admiralty of England, authorised to constitute a Court of Vice-Admiralty in the said Island.’

\(^{168}\) In Apr 1841, Lord Russell had written to Governor Middlemore in connection with his appointment of Seale as Registrar of the Court: he had to report whether in that capacity Seale received any and what amount by way of fees; see SHA, Secretary of State Despatches Vol 4 (1841) at 43, Russell to Middlemore, 1 Apr 1841.

\(^{169}\) See SHA, Secretary of State Despatches Vol 4 (1841) at 151-154, Russell to Middlemore, 30 Jun 1841.

\(^{170}\) As these Commissions were liable to contain stamp duties, the amount of which was regulated by the amount of the emoluments received by the Judge and the Registrar, Governor Middlemore was instructed to transmit to London an accurate statement of such emoluments or of the fees which may have been earned and accrued to the “acting” Judge and the “acting” Registrar since the dates of their appointment. Information was therefore required regarding the duties performed by these officials to determine the remuneration that it would be appropriate to allow them. The officials included Hodson as the one who had hitherto discharged the duties of Admiralty Judge and about whose remuneration Middlemore had earlier enquired. See also SHA, Secretary of State Despatches Vol 4 (1841) at 245-247, letter from Lord Stanley (Secretary of State in the place of Lord Russell) to Governor Middlemore, 30 Oct 1841, concerning the emoluments that had accrued to Colonial Secretary Seale in his capacity as Registrar of the Vice-Admiralty Court and whether he would despite that appointment be permitted to continue receiving a pension for his services to the East India Company.

\(^{171}\) See SHA, Secretary of State Despatches Vol 4 (1841) at 257, letter from Lord Stanley to Governor Middlemore, 8 Nov 1841, transmitting a copy of the Order.

\(^{172}\) See the reproduction of the announcement in Castell (n 21) 330. He served as governor until his death in May 1846: see the proclamations reproduced in Castell (n 21) 379 and 380, and also the St Helena Gazette of 9 May 1846 for the funeral and transitory arrangements.

\(^{173}\) See the reproduction in Castell (n 21) 331.
stated that he would assume the duties of that office from that date.\footnote{174}

Compared to Middlemore’s Proclamation some fourteen months before, which had both constituted the Vice-Admiralty Court and appointed Hodson as its Judge, this one merely announced Wilde’s appointment by the Admiralty as instructed by the Crown. The establishment of the Court was therefore seemingly valid; only the governor’s appointment of someone other than the Chief Justice of the colony as its judge was not.

William Wilde served as Judge of the St Helena Vice-Admiralty Court for virtually the whole period\footnote{175} during which it was most active.\footnote{176} By the time of his retirement in 1863, the slave trade on the Atlantic coast of Africa had been much reduced and with it the number of cases coming before the Court for adjudication.\footnote{177} As a qualified lawyer, Wilde clearly saw to the proper functioning of the Court not only in compliance with Admiralty law, but also, as will be explained in more detail shortly, in accordance with generally accepted procedures.

Although the Order-in-Council of 13 February 1839\footnote{178} establishing the Supreme Court in sections 7 and 8 prohibited the Chief Justice from receiving any fees of office besides his salary as such, or his accepting or holding any other office or position of profit or emolument, on pain of avoidance of his appointment as Chief Justice and the cessation of his salary, that seemingly did not apply to another judicial office or the fees derived from it. His appointment to and receipt of fees from his activities in the Vice-Admiralty Court did not amount to a transgression of this Order. Wilde’s earnings as Admiralty Judge depended on the number of cases coming before the Court and on the particular functions he was then called upon to perform. In 1842 his fees amounted to £60 5s, in 1843 to £50 11s 6d, in 1844 to £11 15s 6d, in 1845 to £33 6s 3d, in 1846 to £142 2s, and in 1847 to £160 3s.\footnote{179} In 1862, the year before his retirement, Wilde

\footnote{174}{In the meantime, the St Helena Vice-Admiralty Court had continued to function and to adjudicate vessels captured by naval cruisers and brought to the island for condemnation: see the notices to that effect by Registrar Seale of 6 Jan, 17 Mar, 6 May, 1 Jun, 2 Jul and 3 Aug, reproduced in Castell (n 21) 313, 315, 316, 319, 324 and 326 respectively.}

\footnote{175}{He was on leave for some months during 1853-1855, when Nathaniel Solomon acted in his place not only as Chief Justice but also on the Admiralty Bench: see the St Helena Almanac for 1855 and again n 48 above. Thus, Solomon J adjudicated slave cases in Jul 1853 (see BPP: ST Vol 40 at 136), in May 1854 (see BPP: ST Vol 41 at 128), and in Oct 1854 (see BPP: ST Vol 41 at 130-131).}

\footnote{176}{If the amount of fees earned annually by the Judge, Registrar and Marshal is taken as an indication of the Court’s level of activity (see also nn 179, 190, 192 and 199 below), 1846 and 1847 appear to have been extremely busy years.}

\footnote{177}{Thus, in Jul 1868, acting Registrar Janisch could report to the Registrar of the High Court of Admiralty in London that no cases had come before the Court during the first half of the year: see his letter in the Court’s Correspondence Book 1842-1872 at 217.}

\footnote{178}{See again n 34 above.}

\footnote{179}{See the Blue Books for those years in, respectively, NA, CO 252/7-12. The return for the fees received by the various officers of the Court from 1842 to 1847 is also contained in the form of a 4-page insert in the Court’s Correspondence Book 1841-1872.}
received, in addition to his annual salary of £700 as Chief Justice of the Supreme Court, a further £43 17 6 by way of fees for his services in the Admiralty Court.\footnote{See the Blue Book for 1862 in SHA.} According to an official table of fees for Vice-Admiralty Courts,\footnote{See the one for 1847 in the Blue Book for that year in NA, CO 252/12.} an Admiralty judge could earn fixed amounts for a wide range of functions, including for the administering of an oath (2s); on the abduction of an action (4s); on pronouncing a party in default (10s); on signing a decree or on pronouncing for the interest of a party proceeding \textit{in poenam} (10s); on sentence or an interlocutory decree (£10 10s); on the sealing of instruments such as a warrant of arrest, a commission, decree, restitution or attachment (7s 6d); and on the exemplification of any document or proceeding (10s).

After Wilde's return to England, Chief Justice William Robert Phelps served on the Admiralty Court from June 1863 to November 1867,\footnote{According to the Blue Book for 1864 in NA, CO 252/29 and that for 1865 in NA, CO 252/30, he earned fees amounting to £17 2s in 1864 and £16 2s in the next year in addition to his annual salary of £700 as Chief Justice.} when John Norcross Firmin acted as both Chief Justice and Judge of the Admiralty Court for a short period before William Alexander Parker was appointed in July 1869.\footnote{According to the St Helena Almanac of 1913 he served until 1874.} Thereafter, from 1874, the governor of St Helena usually acted \textit{ex officio} as both Chief Justice of the Supreme Court\footnote{See again n 36 above.} and hence also as Judge of the local Vice-Admiralty Court.\footnote{In various sources the following governors are mentioned as having served as (acting) Admiralty Judges: Hudson Ralph Janisch 1875-1884 (who was the island-born only son of German immigrant George Wilhelm Janisch, secretary to Governor Sir Hudson Lowe during the period of Napoleon's captivity on the island and his wife, the only daughter of Maj William Seale (see n 57 above), and who also authored the valuable \textit{Extracts from the St Helena Records and Chronicles of the Cape Commanders} (1885)); Lieut-Col Grant Blunt 1884-1887; and William Grey Wilson 1887-1889 (acting) and 1890-1897 (for the Commission appointing the latter as governor for the time being, see the \textit{St Helena Gazette} of 4 Oct 1887, and for that appointing him permanently, see the \textit{St Helena Gazette} of 26 Jul 1890).}

After William Henry Seale, Registrar of the Supreme Court from 1838, had also acted in that capacity in Hodson's Vice-Admiralty Court from 1840,\footnote{See again n 57 and n 155 above.} he remained on in the Court under Wilde until March 1842 when he tendered his resignation. In his place as Registrar of both courts was appointed John Norcross Firmin,\footnote{See SHA, Secretary of State Despatches Vol 5 (1842) at 206-207, letter from the Admiralty to Governor Trelawney, 5 Jul 1842, concerning the resignation of Seale as Registrar of the Vice-Admiralty Court and the temporary appointment of Firmin to perform those duties until the pleasure of the Lords Commissioners of the Admiralty was made known, and informing the governor of Firmin's appointment and of the fact that the Admiralty warrant for preparing the Patent had been forwarded to the Registry Office, Doctors' Commons, where it would remain to be taken up. See also SHA, Secretary of State Despatches Vol 5 (1842) at 105-107, letter from Lord Stanley to Trelawney, 18 Aug 1842, transmitting the Patent appointing Firmin to the office of Registrar of the St Helena Vice-Admiralty Court. Firmin's acknowledgment of 7 Feb 1843 to the Registrar of the High Court of Admiralty in which he}
act in a judicial capacity. Firmin served in that capacity until at least 1869, after which James Francis Homagee, who was the Registrar of the Supreme Court, is occasionally and for many years after mentioned as doing duty as the Registrar of the Vice-Admiralty Court. The Admiralty Registrar, too, received no salary but was entitled to prescribed fees for the performance of various functions in that capacity.

Edward Gulliver, who had been appointed and had served as the Marshal of the Vice-Admiralty Court under Hodson from March 1840, remained on under Wilde, likewise earning no salary but only fees. Henry Mapleton, who had been acting or deputising as Marshal in Gulliver’s place when required, was permanently appointed in that office in February 1854 on Gulliver’s resignation. In January 1853, George V Seale was appointed as Admiralty Marshal, and on his resignation in 1869 his place was taken by Crown prosecutor, occasional Registrar and then acting Marshal James Homagee.

makes arrangements for the Patent to be collected on his behalf in London upon being notified that it is “ready”, is contained in the Court’s Correspondence Book 1842-1872.

See again at n 182 above.

On Homagee, see Hearl “A meteoric career: James Francis Homagee, 1846-1919” Autumn 1992 Wirebird 6-9, who mentions that Homagee acted as Admiralty Registrar in 1874 when only 28 years old and that he was still recorded in that capacity in 1903.

Firmin’s fees, according to the relevant Blue Books, amounted to £158 19s 11d in 1842, £132 8s 7d in 1843, £32 8s 7d in 1844, £104 0s 9d in 1845, £477 8s 2d in 1845, and £169 8s 11d in 1847, and, after, to £142 12.10 in 1862, and to £63 10s 10d in 1864. In addition, in the latter year as also in the next, he further served as Clerk of the Peace at a salary of £200, as Queen’s Advocate at £200, and also received an annual pension of £90: see the Blue Book for 1864 in NA, CO 252/29 and that for 1865 in NA, CO 252/30.

These included, according to the list of fees prescribed to be earned by the Admiralty Registrar in the Blue Book for 1847 in NA, CO 252/12, fees on instruments he had prepared, as well as on documents prepared by a proctor, solicitor or advocate; fees on taking examinations of witnesses; fees on office copies of papers or proceedings; fees on the translation of papers; incidental fees in the progress of a cause; and fees on the paying out of money.

According to the relevant annual Blue Books, the fees he received during 1842 amounted to £140 3s 6d, in 1843 to £130 4s, in 1844 to £44 0s 6d, in 1845 to £74 18s 6d, in 1846 to £338 1s 10d and in 1847 to £246 4s. His fee-earning functions in 1847 included (according to the Blue Book for that year in NA, CO 252/12) the arrest of vessels, taking possession of vessels and/or cargo, releasing such, executing decrees or commissions of appraisement, attendance in Court, the executing of monitions or decrees, as well as travelling expenses if he had to travel to execute his duties.

For instance in 1841 (see the Blue Book for 1841 in NA, CO 252/6, indicating the fees he received in that year as £148) and again in 1852 (see the Blue Book for 1852 in SHA and the advertisement in the St Helena Chronicle of 2 Jul 1852 for the public sale of a condemned vessel he had placed as deputy Marshal) and 1853 (see the similar advertisement in the St Helena Chronicle of 15 Jan 1853).

See the Blue Book for 1852 in SHA and the advertisement in the St Helena Chronicle of 2 Jul 1852 for the public sale of a condemned vessel he had placed as deputy Marshal.

See the St Helena Herald of 23 Feb 1854 and the Blue Book for 1862 in SHA, indicating the fees Mapleton received in 1862 as amounting to £108 10s 2d. When necessary, Mapleton’s place too was filled by a deputy, eg in Aug 1859 by MG Torbett, Marshal of the Supreme Court: see the advertisements for the auction of a condemned vessel placed by Torbett in his capacity as acting Admiralty Marshal in the St Helena Herald of 11 and 18 Aug 1859.

See the Blue Book for 1863 in SHA. Seale earned fees of £52 7s 11d in 1864 and of £262 5s in 1865: see the Blue Books for those years in NA, CO 252/29 and CO 252/30 respectively.

See the Courts Correspondence Book 1842-1872 220 in SHA, recording the tender of his resignation by Marshal Seale to the then Registrar Janisch on 1 Mar 1869, its acceptance, and recording that Homagee had been acting the last twelve months, a factor the Admiralty Judge would take into account in filling the vacancy. Homagee was later appointed Queen’s Proctor (or Admiralty Advocate) St Helena by the Lords Commissioners of the Admiralty in 1889: see the St Helena Gazette of 8 Nov 1889.
He appears to have served in that capacity until at least the 1890s as a number of others are mentioned thereafter simply as having deputised as Marshal of the Admiralty Court.\textsuperscript{197}

Other officials of the St Helena Vice-Admiralty Court included the Queen’s Proctor, the most prominent\textsuperscript{198} of which during its period of noticeable activity was TB Knipe. A retired former East India Company officer and paymaster and also at various times for instance assistant postmaster, auditor, coroner and colonial aide-de-camp,\textsuperscript{199} Knipe\textsuperscript{200} was appointed in March 1847\textsuperscript{201} and appears to have served until at least 1871, after which Thomas Edmund Fowler served in that capacity when required.\textsuperscript{202} Well known practitioners, better known as proctors, in the St Helena Vice-Admiralty Court, included Thomas Baker (there is mention of him acting as a proctor from 1843 onwards); Eden Baker (from 1855 until at least 1875); TB Knipe (from at least 1844 until 1871); Henry Gideon (1844-1868); EF Jenkins (1855-1868);\textsuperscript{203} Thomas E Fowler (1855-1871); and SF Prichard (1855-1875). The fees, to which both advocates and proctors of the Vice-Admiralty Court were entitled for the performance of

\textsuperscript{197} Eg, MG Torbett in 1870 and 1871, Eden Baker in 1874 (see the \emph{St Helena Gazette} of 29 Jan 1874) and 1875; and Robert ML Pritchard in 1884 and for three months in 1892 in the place of Homagee.

\textsuperscript{198} Others mentioned in the sources as having acted in that capacity include George W Janish in 1843, Thomas Baker in 1845 and 1846, and Henry Hamer Gideon in 1846. Gideon was the son of Lewis Gideon (see n 48 above) and his conduct as proctor would feature rather largely in the cases of the \emph{Aquila} (see in par 4 2 4 (1) below).

\textsuperscript{199} According to the \emph{St Helena Almanac} for 1913, TB Knipe was coroner from 21 Jul 1841. He was also colonial aide-de-camp to governor Vice-Adm Charles George Edward Patey from Feb 1870 to Jul 1873.

\textsuperscript{200} There is also a confusing number of other notable Knipes in nineteenth-century St Helena affairs. Thus, a Bazett NC Knipe, the grandson of Matthew Bazett, a Hugenot refugee who had arrived on the island in 1684 as a cadet in the service of the East India Company (see Gosse (n 3) 133), was appointed colonial aide-de-camp in the place of Col TB Knipe who had resigned (see the \emph{St Helena Gazette} of 29 Jul 1872), and also from 1873 onwards served as assistant colonial secretary, a post from which he was dismissed in Jul 1884 for having embezzled some £3 000 from public funds: see Gill & Teale (n 3) sv “1884”. Bazett NC subsequently advertised himself as a clerk and bookkeeper “under the trees”, available to draw up legal documents, keep accounts and collect debts: see the \emph{St Helena Guardian} of 3 Jan 1889. There was also, to mention but two, a Lieut Richard Knipe, whose slave Tom died in 1819 (see Stewart Taylor (n 2) 60), and a Capt W Knipe, whose death and survival by a widow and six small children was announced in the \emph{St Helena Monthly Register} of Oct 1812.

\textsuperscript{201} See the \emph{Blue Book} for 1864 in NA, CO 252/29, where the fees he earned in that year were stated to have amounted to £90 19s 4d, that sum in addition to his salary as superintendent of police of £100, an annual pension of £120, and an annual award from the East India Company of £21 12s.

\textsuperscript{202} A man of many talents and occupations, Thomas Fowler was an attorney, from at least 1855, acted as assistant magistrate from May 1874 to 1885 (see the \emph{St Helena Almanac} for 1874), was appointed the receiver of wreck in Feb 1888 (see the \emph{St Helena Gazette} of 18 Jul 1888), and after having been a coroner for thirty seven years, retired on pension in 1892, and died in Jul 1900 (see Castell (n 21) 503). There is also record that an Edmund Fowler (Thomas Edmund?) was a clerk to the Chief Justice from Oct 1839 until 1841, while a W Fowler was superintendent of public sales for the East India Company in 1831 (see Castell (n 21) 56).

\textsuperscript{203} Jenkins had already been licensed to act as an attorney in 1839 (see the Notice of 16 Apr 1839, reproduced in Castell (n 21) 263) and again (still?) in 1844 (see the Notice of 10 Feb 1844, reproduced in Castell (n 21) 354).
various functions, were likewise prescribed.\textsuperscript{204} It should be borne in mind, finally, that these practitioners, as indeed all the other officials of the Vice-Admiralty Court, were not legally qualified;\textsuperscript{205} they were merchants by trade\textsuperscript{206} or former Company employees who had acquired sufficient an education and experience to have become able to conduct proceedings in or to perform the business of the Court – most were also attorneys of the Supreme Court – no doubt under the guidance of Judge Wilde, the only legally qualified officer of the St Helena Admiralty Court.

(To be continued.)

\textsuperscript{204} In 1847, for instance (see the Blue Book for that year in NA, CO 252/12), an advocate’s retaining fee was £2 2s, and that for pursuing, settling and signing an information or libel claim and an affidavit, or acting on a petition or replication varied from £1 1s to £4 4s “according to length or difficulty”. The retaining fee for proctors was 7s 6d, that for attendance before the Judge in court or in chambers 7s 6d per attendance, and that for attending informations on the final hearing of a cause where it occupied a whole day, £1 13s 4d.

\textsuperscript{205} Thus, it was observed in 1851 (see BPP: Col Gen Vol 6 at 599) of the judicial administration on the island that the law is administered by the Chief Justice who is also the Judge of the Vice-Admiralty Court, that there is a Queen’s Advocate who is also the clerk of the peace, and that there are six proctors and two “attornies”, “but there are no regularly educated lawyers”. See further the discussion of the Aquila case in par 4.2.4 (1) below.

\textsuperscript{206} For instance, Thomas Baker was a merchant, agent (from at least 1844) on the island to the East India Company after the take-over by the Crown, and also to Lloyd’s and various European insurance companies, and partner in the firm T Baker & Co from which he retired in Jan 1856 after which the firm was carried on under the same name by Eden Baker (see the St Helena Herald of 10 Jan 1856). EF Jenkins, again, was a partner in the firm Jenkins & Cole. In the St Helena Gazette of 11 Sep 1847 there appears a notice that all persons having claims on the firm of Messrs Gideon & Solomon, “Proctors of the Vice-Admiralty Court of St Helena”, are to forward same immediately for adjustment.