

A Legal Tourist Visits Eighteenth-Century Britain: Henry Marchant's Observations on British Courts, 1771 to 1772

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At the Rhode Island Historical Society there is a copy of an amazing journal, kept by Henry Marchant (1741–1796) during his eleven-month sojourn in England and Scotland as a colonial agent for Rhode Island.¹ He was a practicing lawyer who had the first-hand opportunity to observe law as it operated on both sides of the Atlantic in the eighteenth century. He was not the only lawyer to do so, but his background as a trial lawyer made his perceptions differ substantially from those of the many colonial law students who received their legal educations in England. Dozens of

1. The full title of the journal is the “Journell of [a] Voyage from Newport in the Colony of Rhode Island &c to London, Travels thro’ many Parts of England & Scotland—began July 8th 1771,” hereafter referred to as the “Marchant Journal”. The original journal remains in the possession of the Marchant descendants. A microfilm (B/M332) is deposited at the Rhode Island Historical Society. Another copy of this journal can be examined at the American Philosophical Society in Philadelphia.

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young colonists ventured from home to London for the legal training and social polish twelve terms at the Inns of Court could provide; their legal notebooks record activities at the Westminster courts as students saw them, learning the law one case at a time, before they returned to the colonies and went into practice. A few more experienced lawyers, such as John Adams, likewise had the opportunity to visit Westminster Hall, but they typically went once or twice, and did not return.

Unlike other lawyers who ventured to cross the Atlantic and then sat through one or two cases at Westminster for the novelty of the event alone, Henry Marchant did more. He was a legal tourist, attending the courts of law whenever he had free time and delighting in taking down the details of cases that he saw argued, whatever they happened to be about. Marchant's engagement with the law was not only vocational, but also avocational—he actively enjoyed discussing points of law and morals with philosophers and clerics, as well as with members of the bar. One might think a lawyer would get away from courts when the opportunity presented itself; Marchant's behavior, however, suggests that the colonial attorney was happiest in a courtroom, even when he was not handling a case himself. Marchant's professional training dovetailed nicely with his personal interests and his political appointment, all of them giving him good reason to frequent the courts of London after his arrival there.

Two previous scholars have made extensive use of Marchant's journal, but neither approached it from the perspective of a legal historian. In 1955, David Lovejoy devoted an article principally to exploring the political landscape that Marchant had stumbled into when he went to London. Although Lovejoy mentioned Marchant's trips to court and a few of the cases he observed, law did not form a core part of Lovejoy's narrative. Politics of the 1760s and 1770s did. As a temporary colonial agent, Marchant struggled with the unfamiliar procedures and seemingly endless delays that bedeviled petitioners of the British government in the mid-eighteenth century. His frustrations and growing conviction that the British government was capable of great injustices to the colonies form the centerpiece of Lovejoy's article.² More recently, John Cole's 1999 analysis of the diary focused upon Marchant's full range of experiences in London, giving equal attention to the people he met through Benjamin Franklin, the visits he made to the theater, and his absolute sense of wonder at the many sights and sounds of London. Marchant, in Cole's article, is portrayed as the wide-eyed man feasting on London society, not so much like de Tocqueville on a quest for the quintessential

2. David S. Lovejoy, "Henry Marchant and the Mistress of the World," *William and Mary Quarterly* 3rd ser., 12 (1955): 375–98.

London as like a person enjoying the experience of a lifetime.³ Although both pieces are excellent, these articles tell us more about Marchant the politician or the “colonial American abroad” than they do about Marchant the colonial lawyer. In fact, he was a man intensely interested in cases, courtrooms, and lawyers, and his journal reflects those emphases.

Marchant took down copious details about the causes he heard argued, although he often was more intrigued by how lawyers argued their cases than in what judges finally decreed. Intertwined with his official duties as colonial agent, Marchant visited the Old Bailey, the courts at Westminster, the Guildhall and Admiralty, and the Scottish High Court, in addition to watching the House of Lords sit as a court of final appeal. His most famous trial report was of *Somerset v. Stewart* (1772), Lord Mansfield’s decision on slave freedom, which had reverberations on both sides of the ocean. Marchant’s careful notes provide us with a previously unknown view of the seminal cause, and offer amplification to the published arguments made in the case.⁴

However, Marchant’s legal tourism took him to more than one trial—he witnessed dozens, and spent much of his time in the company of lawyers, judges, and court officials. Marchant watched lawyers in action the way that modern-day fans would evaluate quarterbacks in a football game, always looking for the move that could be made to win the case, while thinking of how he himself could use those maneuvers when he returned to the courtroom. As such, Marchant’s account of what he saw and did in England and Scotland provides new insights into the legal culture of the eighteenth century. His close observation of courtrooms, lawyers, and judges gives more thorough detail about the legal milieu of London

3. John N. Cole, “Henry Marchant’s Journal, 1771–1772,” *Rhode Island History* 57 (1999): 30–55.

4. The debate on the accuracy of the various accounts of Mansfield’s opinion and the hearings is the subject of James C. Oldham, “New Light on Mansfield and Slavery,” *Journal of British Studies* 27 (January 1988): 45–68. He elaborates further in *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century*, 2 vols. (Chapel Hill: University of North Carolina Press, 1992), introduction and chapter 21. William Wiecek’s earlier article, which favors the Lofft account, is also an important source on this debate, although Oldham uncovered a source unknown to Wiecek. See Wiecek, “*Somerset*: Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World,” *University of Chicago Law Review* 42 (1974): 86–145. Wiecek based his account of Davy’s argument on February 7 on a transcript of the case written by Granville Sharp, available at the New-York Historical Society (*ibid.*, 104–5). Neither Oldham nor Wiecek had access to the Marchant journal prior to their publications. Although aware of Marchant’s diary, George Van Cleve used it only as background for his larger discussion of the accuracy of conflicting interpretations of the *Somerset v. Stewart* opinion. See Van Cleve, “*Somerset*’s Case Revisited: *Somerset*’s Case and Its Antecedents in Imperial Perspective,” *Law and History Review* 24 (2006): 601–46.

and Edinburgh than one could hope to find in a dozen travelers' journals. Marchant understood the nuances of legal proceedings, and it is that eye for detail that makes his account invaluable. All of it he recorded in his "Journell of [a] Voyage from Newport in the Colony of Rhode Island &c to London, Travels thro' many Parts of England & Scotland—begun July 8th 1771." However, before we can evaluate what his journal reveals, we must first know more about Marchant and his background, as well as the events that took him to England in 1771.



Figure 1. Henry Marchant (1741–1796), engraving by Max Rosenthal, n.d. Courtesy of Historical & Special Collections, Harvard Law School Library. <http://www.law.harvard.edu/library/special/index.html>.

Marchant, Rhode Island Lawyer and Politician

Marchant was part of the powerful Ward family clan, which controlled politics in the southern part of Rhode Island through most of the eighteenth century. Two members of his immediate family were governors of the colony. Therefore, Marchant grew to manhood in a politically savvy environment, probably hearing repeated discussions at the family dinner table about government disputes. His own origins were, however, much more humble. Marchant, a descendant of French refugees who came to the American colonies at the end of the seventeenth century, was born on April 9, 1741 on Martha's Vineyard in Massachusetts.⁵ His father, Huxford Marchant, was a master mariner, who left the Vineyard and relocated to Newport, and, after the death of his first wife, Henry's mother, in 1745, married for a second time. With his second marriage, Huxford ensured that Henry would grow up in relative affluence; the mariner married Isabel Ward, daughter of the politically active Ward family that took in Marchant following Huxford's death only a few years later.⁶ As a successor to the Ward family's wealth and influence, Marchant would need a first rate education, or at least the best that the colonies could muster.⁷ When he was fifteen, Marchant became a student at the College of Philadelphia (now the University of Pennsylvania) where he studied for three years but did not graduate. Marchant returned from Philadelphia to his native New England, where he both studied law and served as librarian to the first great library established outside a college in the colonies, the Redwood Library of Newport.⁸

In Boston, his legal studies were overseen by Edmund Trowbridge, one of the wealthiest and best connected lawyers of the pre-Revolutionary era. Although Marchant did not study at Harvard College in the conventional sense, his training in Philadelphia and with Trowbridge earned him a

5. Elisha Potter, *Memoir Concerning the French Settlements and French Settlers in the Colony of Rhode Island* (Providence: Sidney Rider, 1879), 130. Copy consulted at the Newport Historical Society, as part of their tract series (listed as Tract No.5).

6. Charles E. Banks, *The History of Martha's Vineyard Dukes County Massachusetts in Three Volumes: Volume III: Family Genealogies* (Edgartown: Dukes County Historical Society, 1925), 292.

7. Southern elite families were more willing than northern ones in the eighteenth century to send their children overseas for higher education. On the history of education in this period more generally, see Bernard Bailyn, *Education in the Forming of American Society: Needs and Opportunities for Study* (New York: Vintage Books, 1960), Julie Flavell, *When London was Capital of America* (New Haven: Yale University Press, 2010).

8. George C. Mason, *Annals of the Redwood Library and Athenaeum, Newport Rhode Island* (Newport: Redwood Library, 1891), 52.

Harvard M.A. “*gratiae causa*” in 1762.⁹ Trowbridge was considered by many to be the greatest common lawyer and legal instructor of the period in New England. Described as a “conservative judge” who withdrew from public life once the Revolution began, Trowbridge had many students who paradoxically became the “young rebel lawyers,” playing roles of varying importance in the American Revolution and the formation of the new republic.¹⁰ Among his many students were Christopher Gore, Theophilus Parsons, and James Putnam, who in his turn tutored John Adams.¹¹ Once trained, Trowbridge’s students fanned out across New England, creating a spider web of legal connections. Rhode Islander Henry Marchant was called “Harry” by his intimates, which included the law students he studied with, such as Francis Dana, who remained in Boston after Marchant departed for his home in Newport.¹²

Following his return to Rhode Island in 1765, Marchant married Rebecca Cooke in what appeared, through their correspondence, to be a match based as much upon love as upon social standing. They had four children, three of whom lived to adulthood.¹³ Described by many as an early ardent patriot, Marchant was active in fighting the Stamp Act in 1765.¹⁴ Admitted to the Rhode Island Bar in 1767, he began practice in Newport where, in short order, his standing rose both professionally and politically.

9. John Sibley, *Biographical Sketches of Graduates of Harvard University, in Cambridge Massachusetts*, 18 vols. (Boston: Massachusetts Historical Society, 1873–1999), 14: 456–64.

10. The “young rebel lawyers” can be found in David S. Lovejoy, “Henry Marchant and the Mistress of the World,” *William and Mary Quarterly* 3rd ser., 12 (1955): 376. Marchant feared that the Boston Massacre, and the trial which followed it, would be too much for his former teacher, suggesting that Trowbridge may have retired into private life for reasons of ill-health rather than because of monarchical leanings, as has been suggested elsewhere. Henry Marchant to Francis Dana, March 20, 1770 (f.81, Henry Marchant Letterbook 1769–1771, Rhode Island Historical Society). The letterbook survived by chance; it was discovered jammed between the floorboards of a store in Newport in approximately 1905. See newspaper clipping from August 20, 1946, “Life of Revolutionary Lawyer Reviewed: Historical Society Told of Henry Marchant” containing an interview with Lloyd Robson about the discovery. “Henry Marchant” folder, Newport Historical Society.

11. “Edmund Trowbridge,” Sibley, *Biographical Sketches*, 8: 507–10.

12. Francis Dana to Henry Marchant, December 27, 1770 (Marchant Correspondence, Rhode Island Historical Society).

13. Banks, *The History of Martha’s Vineyard Dukes County Massachusetts in Three Volumes*, 3:294–5. The volume omits mentioning the son who died during Marchant’s absence in England.

14. *Biographical Directory of the United States Congress 1774–1971* (Washington: Government Printing Office, 1971), 1336.

Family connections, and his abilities as a good orator, helped Marchant advance. Still a relatively young man, Marchant sought his first political office at the age of 29. He became assistant to the colony's attorney general in 1770 in an election that one historian described as divided purely along factional lines between the followers of Stephen Hopkins and adherents of the Wards.¹⁵ When the attorney general, Oliver Arnold, died the following year, Marchant stepped forward to fill out Arnold's term. However, in 1771, Marchant was elected to that office, to be Rhode Island's attorney general in his own right, an office he would hold until the Revolution began and he moved on to bigger and more important political jobs.¹⁶ Initially, the post of attorney general may well have been Marchant's due to his family's influence, but his ability to keep and fill the position was most likely based upon his legal capacity and his reelections to the post were supported on a bipartisan basis.¹⁷ Marchant remained attorney general from 1771 to 1777, when he was elected to the Continental Congress.¹⁸ Serving as attorney general did not prevent young Marchant from handling legal business on behalf of private clients. Indeed, his own family (including his uncle, the former governor) brought him numerous cases to litigate. His heavy caseload expanded his reputation as a hard-working lawyer while simultaneously lining his pockets with fees.¹⁹

When Marchant became attorney general, Rhode Island was embroiled in a controversy resulting from its participation in the Seven Years' War, which had ended several years earlier. During the war, Rhode Island's General Assembly had provided the British government men and material for an expedition to Crown Point in 1756, but its claims upon Parliament for repayment afterward were not satisfied in the decade or more that followed. Marchant, like many men infused with the spirit of liberty, did not take well to the various restrictions Great Britain placed upon Rhode Island's trade, and was incensed that Rhode Island remained uncompensated for its efforts to support Great Britain during the war against France. Other colonies, such as Massachusetts, had already received reimbursements for their war expenses, and Rhode Islanders were upset that

15. Sibley, *Biographical Sketches*, 14: 456–64.

16. Sibley, *Biographical Sketches*, 14: 456.

17. Sibley, *Biographical Sketches*, 14: 457. See also Wilkins Updike, *Memoirs of the Rhode-Island Bar* (Boston: Thomas H. Webb, 1842), 83–89, upon which Sibley drew for much of his material. For further biographical material, see *Dictionary of American Biography*, 20 vols. (New York: Charles Scribner's Sons, 1928–1986) 12: 271–72; *Who Was Who in America: Historical Volume* (Chicago: Marquis, 1967), 402.

18. *Biographical Directory of the United States Congress 1774–1971* (Washington: Government Printing Office, 1971), 1336.

19. Lovejoy, "Henry Marchant and the Mistress of the World," 376–377.

their Parliamentary grant had not yet come through. Between 1765 and 1770, they sent numerous petitions and letters to be presented to Parliament by their colonial agent, but nothing persuaded the British politicians to pay. Meanwhile, three men who had been appointed stamp tax collectors in 1765 had had their homes and businesses looted during the riots that took place in Rhode Island, and they too were in England, seeking compensation that might ultimately have to be paid by the colony's assembly.²⁰ In the minds of some London politicians, these two financial matters became connected. Why should Rhode Island's General Assembly be repaid for wartime support, when the same General Assembly refused to compensate His Majesty's stamp tax collectors who had had their houses ruined in 1765?

The tangled web of relations was further confused by the alleged ineffectiveness of Rhode Island's colonial agent in London, Joseph Sherwood, who was apparently meeting with little success in getting these and other claims resolved. Colonial agents had scored significant political victories during the Stamp Act crisis, but afterwards, their abilities to influence affairs in London began to wane.²¹ Rhode Island's assemblymen, perhaps hoping that Sherwood could do more if only he were nudged to action, believed that Marchant might act as that prod, and perhaps even prove an effective supplicant in his own right. Marchant, meanwhile, was counselor for yet another set of legal combatants whose case was being appealed to the Privy Council in London. Therefore, members of the Rhode Island General Assembly thought it best in 1771 to name Marchant as a co-agent with Sherwood and dispatch him to London to straighten out the colony's wartime claims and the counterclaims of the stamp tax collectors, as well as the alleged inefficiencies of Sherwood. In his spare moments, Marchant would be able to keep close watch on his other private legal causes also.²² Unlike most lawyers, who were forced

20. John N. Cole, "Henry Marchant's Journal, 1771–1772," *Rhode Island History* 57 (1999): 31; Lovejoy, "Henry Marchant and the Mistress of the World," 378.

21. Michael G. Kammen, "The Colonial Agents, English Politics and the American Revolution," *William and Mary Quarterly* 3rd ser., 22 (1965): 245; Lovejoy, "Henry Marchant and the Mistress of the World," 379.

22. Marchant would also be caught up in *Freebody v. Brenton et al.*, which had set the Rhode Island courts against those in England in a struggle for both judicial supremacy and control over local currency affairs. The complex politics surrounding this case are covered well by Lovejoy (see "Henry Marchant and the Mistress of the World," 375–98). For details of the decision see Joseph H. Smith, *Appeals to the Privy Council from the American Plantations* (New York: Octagon Books, 1965), 339, and the prior sequence of appeals to the Privy Council are recounted in Cole, "Henry Marchant's Journal," 33–4.

to delegate matters that crossed the ocean, Marchant's adventures in law would take him to courtrooms and offices where he could oversee how legal affairs unfolded in England, "at home."

Distance mattered to Marchant; he was a cautious counselor in law, who declined legal business when it was "too far away" for him to conduct personally, and took care that his clients received the best advice possible about when and whether to pursue litigation. His decision to venture to London combined personal and public business that must have coincided with private desires to travel. He began a 3000-mile journey, but what of the legal matters he left behind?²³ While gone, he placed most of his legal affairs in the hands of William Ellery, with whom he entered into a short-term legal partnership shortly before taking ship for England.²⁴ Ellery's knowledge of Marchant's business was comprehensive. Prior to his departure, Marchant left Ellery detailed instructions about the state of every case he was engaged in, along with a warmly supportive note indicating that Ellery enjoyed his complete confidence.²⁵ Older than Marchant by a decade, Ellery had amassed a private fortune before taking up the law, but Marchant had three additional reasons to trust Ellery: like Marchant, Ellery was also connected to the Ward family (as a political supporter); to Edmund Trowbridge (Ellery boarded in Trowbridge's household while studying at Harvard); and to the Sons of Liberty.²⁶ Ellery would manage legal matters on the domestic front, while Marchant himself intended to resolve some client business during his London stay, in addition to his work on the colonial appeal for reimbursement. Most probably, the causes Marchant carried with him were cases with large financial stakes, for

23. Henry Marchant to William Hancock, April 14, 1770 (f. 87, Henry Marchant Letterbook 1769–1771, Rhode Island Historical Society).

24. Memorandum between Henry Marchant and William Ellery, May 1, 1771 (Marchant Correspondence, Rhode Island Historical Society). Richard Aldrich was entrusted to finish another legal matter; the division of legal work Marchant left behind may have reflected the different venues where he argued cases. Henry Marchant to Walter Franklin, June 1, 1771 (f.281–82, Henry Marchant Letterbook 1769–1771, Rhode Island Historical Society). Ellery was the son and namesake of another William Ellery, who had initially recommended Marchant to be trained by Trowbridge years before. This series of relationships is documented in William Ellery [Senior] to Edmund Trowbridge, May 5, 1771 (Henry Marchant Copybook of Letters of Introduction, Rhode Island Historical Society). William Ellery's other son Benjamin also studied at Harvard as a member of the same class as his brother (1747), and married into the Redwood family that founded the library of the same name. See Sibley, *Biographical Sketches*, 12: 131–33.

25. Henry Marchant to "Dear Billy," [William Ellery], November 21, 1770 (Henry Marchant correspondence, Newport Historical Society).

26. Sibley, *Biographical Sketches*, 12: 135–40.

Marchant declined to appeal cases from the colony to London for trivial amounts.²⁷ As he told one disgruntled client who insisted on appealing to London, any such appeal would require entering into a prosecution bond for “very large sums of Sterling money” and to prevent the loss of such bond, the case would have to be pursued “with effect.”²⁸ The cases Marchant took with him in 1771 were mostly those that he hoped to settle privately, and while he journeyed through the English countryside, he occasionally transacted some of these affairs, though his diary is sadly bereft of much information on these matters.²⁹

After departing Newport on July 8, 1771, Marchant and his wife traveled to Boston where he would bid farewell to his many legal friends and take ship for London a week later.³⁰ The “Gentlemen of ye Bar”—many of them former students in Trowbridge’s office, or known to Marchant from the law circuit—feted him at the Bell Tavern with turtle, various delicacies, and rich wine. Friends, lawyers and non-lawyers alike, pressed him to carry letters to family and business correspondents abroad; his diary upon arrival in London reads like a postman’s delivery book, crisscrossing the metropolis to deposit these missives for colonial friends and acquaintances. Meanwhile, Marchant’s extensive network of contacts, stretching into political, literary, legal, and business realms, prepared him well for the trip; he departed the colonies bearing more than seventy letters of introduction, opening doors to men ranging from a minister in Edinburgh and lawyers across the countryside to the current

27. See Mary Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge: Harvard University Press, 2004), where virtually all cases appealed overseas were for large sums.

28. Henry Marchant to Benjamin Levy, January 28, 1771 (f.210–211, Henry Marchant Letterbook 1769–1771, Rhode Island Historical Society). Levy had the temerity to ask Marchant to prosecute the case all the way to England, while neglecting to pay him for any work he had done in Rhode Island courts.

29. He did, with the help of Lawrence Holker, solicitor, get *Freebody v. Brenton* heard at the Cockpit, in which he was successful in having an adverse decision temporarily set aside for his client. See Marchant to Holker, November 4, 1772 (f. 18–20, Henry Marchant Letterbook 1772–1791, Rhode Island Historical Society). The decision favoring Marchant’s client was later overturned by the King’s Privy Council. See Henry Marchant to William Redwood, November 8, 1774 (f.154, Henry Marchant Letterbook 1772–1791, Rhode Island Historical Society). Cole has suggested that *Freebody v. Brenton* was unwinnable, and that Marchant’s efforts were almost doomed from the outset. See Cole, “Henry Marchant’s Journal, 1771–1772,” 52.

30. Franklin Dexter, ed., *The Literary Diaries of Ezra Stiles*, 3 vols. (New York: Scribner’s, 1901), I: 304, December 4, 1772. The portion of Marchant’s journal covering mid-September to early October is missing from the original and microfilmed copies, but has been partly transcribed into Dexter, ed., *Literary Diaries of Ezra Stiles*, I: 304–22.

secretary of the Board of Trade and Plantations and a linen draper living in Cheapside.³¹

Marchant's Travels

Bidding adieu to wife and friends, Marchant boarded his ship and began his legal adventure in earnest. The voyage to England was an arduous one, his ship pitched about by dangerous seas that were unexpected in the summer months when the Atlantic was supposed to be calmer. In a letter home, Marchant wrote that the captain “scarcely remembers out of many passages even in the winter, to have met with one altogether so disagreeable” as their voyage in 1771. Gales, rough seas, and torn sails made for a fitful journey, and the weather tossed and turned the boat so much that at one point Marchant recalled “a sea, drove up the glass window, rushed into the cabin & set every Thing that was not firmly lashed afloat.” Still, Marchant considered himself lucky that their cabin received only one soaking in the stormy ocean passage.³² Upon his arrival in London on August 19, Marchant set about delivering the letters entrusted to him, and learned that Benjamin Franklin, who had offered to find him lodging near his own in Craven Street, just off the Strand, was about to embark on a trip to Ireland and Scotland. They made arrangements to meet in Edinburgh later that fall, if possible.³³

Marchant wasted little time, immediately going to work on the Rhode Island case for compensation. During the eleven months that Marchant spent in London, he pressed Rhode Island's claims forward by all means possible. Marchant's background was such that he was well-prepared for this endeavor: he understood political infighting and debate, while his legal training prepared him for courtroom arguments, and he also knew that some struggles were most successfully conducted over glasses of port and Madeira. He visited, dined with, and cajoled as many officials as he could in the fall of 1771. Marchant remained determined—he had

31. Henry Marchant Copybook of Letters of Introduction, Rhode Island Historical Society. The act of accumulating letters prior to departure on such a journey has been well described by Susan Lively in her dissertation, “Going Home: Americans in Britain, 1740–1776” (PhD diss., Harvard University, 1996). For Marchant's letter of introduction to Franklin, see Ezra Stiles to Benjamin Franklin, June 25, 1771, in *The Papers of Benjamin Franklin*, 38 vols. (New Haven: Yale University Press, 1959–), 18:144.

32. Henry Marchant to Ezra Stiles, September 5, 1771 (Ezra Stiles correspondence, Beinecke Rare Book and Manuscript Library, Yale University).

33. Marchant Journal, August 19, 20; September 5, 13, 1771.

multiple meetings, public and private, with the appropriate men in power who could help. His repeated visits to the Treasury appeared to pay off after a few months, when it seemed that power brokers in Whitehall were coming around to support the Rhode Island Assembly's position that there should be no link between the Crown Point expedition expenses and payments for the stamp tax collectors' damaged homes. Indeed, for a time, Marchant appeared to be making much more progress than Sherwood had in the previous five years. They did not work in tandem, although the two men met regularly, as Marchant's busy diary makes clear. Sherwood was pursuing many matters for the colony, whereas Marchant's trust extended solely to getting the colony's Crown Point money back.

Marchant might have learned a great deal from Sherwood, had he inquired. He apparently did not realize that the chronic instability in the British government in the 1760s and 1770s could sometimes be played to the colonists' advantage. Regardless, Marchant pressed forward on all fronts, although his efforts more often brought him frustration and fatigue than any feeling of success.³⁴ The process of arranging the meetings with and gaining access to influential men could be quite slow. There were postponements and delays that Marchant, as a petitioner, could do little about.³⁵ The leisurely approach that English nobles took to government work sometimes irked him. When he first arrived, Marchant discovered that the "Great Ones of the Earth, being at their Seats in the Country" meant that "there is most certainly the greatest Inattention to the affairs of the state you can possibly...conceive of."³⁶ The meetings might be scheduled weeks apart—small wonder that Marchant found numerous ways to amuse himself in London, a city that he nicknamed "Mistress of the World" for all its entertainments.

For much of the time, between hard-won appointments with great men and going to the Cockpit, the Treasury building in Whitehall where he met individuals affiliated with the Board of Trade and Plantations, Marchant became a legal tourist, visiting the places that historians often wish to know more about from the perspective of a careful, observant man trained in law in the eighteenth century. Some of Marchant's wandering was directed by a *vade mecum* that would have been familiar to travelers in his day—he owned a copy of *Rider's British Merlin* for 1772, which contained dates and information about the political and social events that made

34. On how agents could use delay to the colonists' advantage, see Kammen, "The Colonial Agents," 248.

35. The increasing obstructions that all agents encountered doubtless hindered Marchant in his dealings with government officials. See Kammen, "The Colonial Agents," 254, 257.

36. Henry Marchant to Ezra Stiles, September 5, 1771 (Ezra Stiles correspondence, Beinecke Rare Book and Manuscript Library, Yale University).

up London's public life for elites. It listed the official days for the meetings of Parliament, the king's levee days, the members of the various courts, and even on what days fairs were held. Such a guidebook would steer Marchant through the metropolis and help him avoid making faux pas, while ensuring that he knew which courts were open when, and where they would be held.³⁷

Some of what he saw, he wrote about in the numerous letters that he sent home to America. In the first three months of his London visit, Marchant wrote more than thirty-five letters, many of them containing tidbits of his London experiences.³⁸ His letters were best preserved by Ezra Stiles, to whom Marchant addressed lengthy, colorful accounts full of the good and bad in England. To Stiles, Marchant described his arrival in the London outskirts in terms of both beauty and trepidation, particularly as he crossed Blackheath, known for its waiting highwaymen. "As I approached London, the fields became gardens, & here & there elegant seats of the Great. . . At Length London itself appeared from a high Hill just entering upon black Heath—no agreeable Place at Night."³⁹ These letters, sometimes extending to ten and fifteen pages, no doubt brought their readers a small taste of the exotic faraway place Marchant was seeing.

The best and fullest descriptions, however, Marchant preserved in his journal, which he used to record the events in London and his travels across England and Scotland. Like many provincials travelling abroad for the first time, Marchant kept a daily journal describing not only whom he met and where he dined, but even the oddness of experiencing an everyday life that was far different from what he had previously known. Everything struck his senses as odd, new, disjointed; his letters home and his journal recorded how strange the sights were, how loud the noises seemed.⁴⁰ He did many things common to well-born, well-heeled colonists: he was presented at the royal court, took the air by walking through numerous parks, frequented the theater, and may have had his

37. Cardanus Rider, *Rider's British Merlin, for the Year of our Lord God 1772, Adorned with many delightful and useful Verities fitting all Capacities in the Islands of Great Britain's Monarchy* (London: 1772) in the Marchant family's possession. Mentioned by Susan Brayton, "The Library of an Eighteenth-century Gentleman of Rhode Island," *New England Quarterly* 8 (1935): 278.

38. Unpaginated list of all letters written by Henry Marchant while in London, Friendly Correspondence Book, Jantz Early Ms. #49 (Harold Jantz collection of early manuscripts, Duke University Special Collections).

39. Henry Marchant to Ezra Stiles, September 5, 1771 (Ezra Stiles Correspondence, Beinecke Rare Book and Manuscript Library, Yale University).

40. Henry Marchant to Ezra Stiles, September 5, 1771 (Ezra Stiles Correspondence, Beinecke Rare Book and Manuscript Library, Yale University).

portrait painted.⁴¹ Marchant inscribed the highlights and disappointments of city life in his diary, selections he doubtless intended to not only to remind himself of his activities in London, but to whet the appetites of his family members and fellow lawyers upon his return to Boston and eventually Rhode Island.⁴² In the eighteenth century, journal-keeping was part private, part public; close friends and family members could expect to ask for and receive reading privileges in a traveler's diary, a convention that Marchant certainly understood. Thus, journals were never purely personal, and had a performative aspect to them; the journal keeper was expected to reflect upon religion, social conventions, and absent family members with a sensitivity that would edify later readers. Simultaneously, such a journal would serve as a testament to character development for the time that the keeper was away from family and friends who would normally safeguard the keeper's moral rectitude. Journals were also transcribed and copies kept by individuals who found deeper meaning in their content. When Marchant returned to Rhode Island, he lent his diary to friends such as Ezra Stiles, friend, minister, and later president of Yale College, who spent pages in his own diary transcribing sections of *Mr. Marchant's Travels and Memoirs in six Books MSS*.⁴³

Within the first week of his arrival in town, Henry Marchant made contact with many London-based solicitors and men trained in the law. His letters of introduction, from eminent attorneys and politicians in both Rhode Island and Massachusetts, ensured that he would be welcome among his brother lawyers in London, even though he did not yet know them personally. After only a week, his journal was filled with a litany of lunches and dinners he had with solicitors and barristers, sometimes two and three a day. Surprisingly, his journal does not suggest that he became a close friend of the one solicitor, Lawrence Holker, whom he saw most frequently. Although he visited Holker's offices in Queen Street two and three times a week, the two men appear not to have socialized outside of business meetings. Holker was handling the appeals case before the Privy Council that Marchant was personally connected with, but Marchant's diary does not reveal that the men grew close, despite

41. Wilkins Updike, *A History of the Episcopal Church in Narragansett Rhode Island including a History of other Episcopal Churches in the State*, 2d ed. (Boston: D.B. Updike/Merrymount Press, 1907), 224. Although family lore said that the likeness was painted by Copley, Copley's dates of residence in London render it impossible that he did the work in that city (*ibid.*, 536). For likenesses of Henry Marchant and Rebecca Marchant see *ibid.*, 424 and, *ibid.*, 442, respectively. It is possible they were painted by Copley prior to his departure for England in 1774.

42. Marchant Journal, February 7, 1772.

43. Dexter, ed., *Literary Diaries of Ezra Stiles*, I: 304, December 4, 1772.

repeated contacts during the year.⁴⁴ With other solicitors and barristers, however, he found a ready-made set of collegial associates, brothers who knew the colorful, sometimes bizarre language of land law and probate. Through them, Marchant was introduced to their private world: the Inns of Court and nearby coffeehouses where he began routinely dining in London.

Likewise, connections afforded him through the relations and friends of his colonial colleagues began to fill up his breakfasts and teas. After only a month, Marchant's circle included many luminaries: in addition to Benjamin Franklin, he met Dr. Samuel Johnson, and at the Drury Lane Theatre he watched the renowned actor David Garrick perform, who in later months became a visitor at Marchant's dwelling. Marchant saw Garrick perform in numerous plays, including *Richard III*, and also took in performances of dancing at Sadler's Wells and opera at Covent Garden. Marchant's theater-going habits were nearly as pronounced as his attendance in courtrooms. In the first six months of 1772, Marchant went to the theater more than twenty times, and he became intimate enough with Garrick that the actor invited him to visit the backstage areas of the Drury Lane Theatre, which Marchant did with much enthusiasm.⁴⁵

Marchant's political opinions, in support of colonial freedom from government interference, widened his circle of friends to include many notable political critics of British government actions. He made the acquaintance of Richard Price, a dissenting minister who used pulpit and pen to attack the British government for its mishandling of colonial affairs.⁴⁶ Likewise, Marchant dined with Catherine Macaulay several times in the spring and summer of 1772 and the two became friends, exchanging views on history and politics. Her support for the cause of liberty was well established before Marchant met her, and their friendship was enhanced by the similarity of their political outlooks. She gave him a set of her history volumes to bestow on the Redwood Library in Rhode Island, and they continued to correspond following Marchant's return to America.⁴⁷

Marchant also set about building up his personal library, buying and shipping books home for future use. His purchases ranged from legal

44. *Freebody v. Brenton et al.* (see notes 22 and 29).

45. Marchant Journal, May 30; June 10, 1772.

46. Lovejoy, "Henry Marchant and the Mistress of the World," 391.

47. See, for example, Marchant to Catherine Macauley, December 7, 1773, Friendly Correspondence Book, Jantz Early Ms. #49 (Harold Jantz collection of early manuscripts, Duke University Special Collections). On the topics of their conversation, see Henry Marchant to Ezra Stiles, May 14, 1772 (Ezra Stiles correspondence, Beinecke Rare Book and Manuscript Library, Yale University). Macauley herself did not comment on *Somerset* or on the topic of slavery during this decade.

texts to the latest collections of essays and scientific works. He bought not only on his own account, but for friends such as Francis Dana and Ezra Stiles, who had entrusted him with lists of works that they wanted for personal or professional reasons. The process of buying was also designed to create, for Marchant, a connection to book dealers in London whom he might write to in future, requesting that they send volumes to him.⁴⁸ Marchant's earlier position as librarian for the Redwood Library gave him a working knowledge of the pricing and publication schemes many booksellers used. By meeting with such men in person Marchant could dictate the bindings and specific colors of leather that he wished his books to have. Such relationships could then be called upon years later. In a letter he wrote to Alexander Grant, merchant of London, in February 1774, Marchant explained that his books should be purchased from Brotherton & Sewell. Their shop could be found "at the Sign of the Bible opposite the Royal Exchange," he noted, and explained to Grant that "I have had many Books of Them, and it may not be amiss to let them know you want Them for me."⁴⁹

Social activities like book buying occupied only part of Marchant's time, when he was not waiting at the Cockpit for official answers to his petitions on behalf of Rhode Island. Marchant also turned his attention to the other legal causes that had brought him to London. Within six weeks, he arranged for several of these private suits to be settled out of court. In one instance he met by appointment with six gentlemen, two of them lawyers, who worked for a Captain Manderley, who had employed Marchant in Rhode Island to defend him there against various attachments and suits, and within a few days Marchant and the other lawyers resolved the litigation that had ranged against Manderley on both sides of the Atlantic. Marchant likewise met with a Mr. Parker, a solicitor who worked for a Mrs. Laycock. Parker handled Laycock's business in England, while Marchant managed her affairs in Rhode Island, and the two men consulted about her legal needs at home and in the colonies. This won Marchant an

48. See, for example, Henry Marchant to Alexander Grant, February 12, 1774 (reprinted in full in Brayton, "The Library of an Eighteenth-century Gentleman of Rhode Island," 277–83). Brayton's concern that the family library contained no law books when she examined it is easily explained: Marchant's son and grandson both became attorneys, and doubtless put the books to practical use, such that they passed out of the family's collection of literary and religious works.

49. In this letter, Marchant requested reports by Talbot, Willson, Plowden, and Burroughs; and collected works by Sir William Temple, Matthew Hale, and Sidney "on Government," in addition to Vattel's *Law of Nations*. Marchant to Alexander Grant, February 12, 1774, quoted in Brayton, "The Library of an Eighteenth-century Gentleman of Rhode Island," 280–81.

invitation to visit Parker's home at his next opportunity. And later that month, Marchant stopped off at the country seat of a Mr. John Blades, to discuss his land claims in Rhode Island.⁵⁰

Marchant's travels away from London began in earnest in the fall, for he records riding north in October, visiting Manchester, Leeds, York, Durham, and Newcastle, before passing into Scotland. When Benjamin Franklin arrived in Edinburgh, Marchant's social circle widened enormously, and one suspects that he timed his visit to Scotland so as to coincide with that of the most famous American colonist. Through Franklin, Marchant was blessed with the opportunity to meet numerous accomplished individuals; Franklin's notoriety opened doors for them everywhere.⁵¹ For example, Franklin was "lodging with the celebrated Mr. David Hume." Franklin's notoriety opened doors that might otherwise have remained shut to Marchant. Franklin's and Hume's network of contacts made it possible for Marchant to meet judges, local attorneys, and authors during his trip. Marchant's friend, Ezra Stiles, concluded after reading Marchant's journal about the men he spoke with that the traveler had met all the "men of the first eminence" in Scotland.⁵²

After a lengthy tour of the college at Edinburgh, its library and buildings, Marchant attended lectures on medicine, physics, and chemistry. A few days later, he rode out to Stirling with Franklin to visit Lord Kames, the distinguished jurist, where they stayed, dined, and spoke at length about law. Westwards to Glasgow the two men went, then returned to Edinburgh, where Marchant continued to sate his legal curiosity with the help of attorney Henry McKenzie, in whose office he spent a long time examining various legal records. Scottish legal practice did not mirror that of London or the colonies in the eighteenth century: key differences stemmed from the Scots' comingling of common law with Roman civil law precepts.⁵³ Accordingly, having access to a Scottish attorney's office probably furnished Marchant with many legal curiosities, and seeing the Scottish judges and lawyers in action may have done so as well. After Franklin left for London on November 21, Marchant continued going to

50. Marchant Journal, August 22; October 7; October 20; October 23, 1771.

51. Henry Marchant to William Greene, February 25, 1772 (William Greene papers, Rhode Island Historical Society); Henry Marchant to Ezra Stiles, February 26, 1772 (Ezra Stiles correspondence, Beinecke Rare Book and Manuscript Library, Yale University).

52. Dexter, ed., *Literary Diaries of Ezra Stiles*, I: 304, 308, December 4, 1772.

53. Kenneth Redden, ed., *Modern Legal Systems Cyclopedica* rev. ed. (Buffalo: Wm. S. Hein, 2001), §3.240.12–3.240.32. On specific doctrinal differences between English and Scots law, see Lord MacKenzie, *Studies in Roman Law with Comparative Views of the Laws of France, England, and Scotland* (Edinburgh: 1865; repr. ed., Holmes Beach, FL: W. W. Gaunt & Sons, 1991).

Scottish courts, attending the High Court of Sessions, while making the acquaintance of even more merchants and leaders of the Edinburgh business community.

In Edinburgh, Marchant saw adversaries at work in various trials, and recorded with greater depth several causes heard by Scots courts. In one he watched Lord Kames, his new acquaintance, at work in a disputed contract case, and the next day observed him untangling a confused bankruptcy affair. The bankruptcy case was the more interesting one, if one judges by the enthusiasm with which Marchant recorded the details. The case turned on the question of whether a Scots bankrupt was obliged to follow a statute that was 200 years old, which would require him to wear a red cloth outside his clothes and stockings of different colors. The law had been instituted to warn the unwary about the financial state of a man's affairs once he became an acknowledged bankrupt. The statute was apparently only applied to persons who had maliciously overextended themselves, rather than to those individuals who were bankrupted by forces beyond their control. On another occasion, he heard an admiralty case argued in Edinburgh in a case of some tea seized for falling afoul of the numerous trade regulations. This case sent Marchant on a brief tirade about the ill-conceived nature of British trade restrictions and their effects, which could deprive a man of his property in a hearing before a single judge and no jury. "Oh Britons think of this," the future revolutionary scribbled, "& if not blush—Tremble!"⁵⁴

As is so often the case with Marchant's diary, he recorded the arguments made and the key issues of the case while failing to note the parties' names or the judge's final decision in the case. Had Marchant intended to cite the cases as precedents upon returning to Rhode Island, he might have done both; alternatively, he may have relied upon his memory to reconnect the fact patterns with the printed case reports he would later purchase upon his return home. However, it seems most likely that he thought a record of the fact patterns would be enough to serve him as an *aide-memoire*, should he ever see a similar case again. The transition to printed case reports that occurred in the eighteenth century meant that published accounts of trials would probably carry more weight with a colonial judge than would any transcribed account that Marchant would take down. Nonetheless, Marchant recorded the events for himself, and for the friends and family whom he knew would read the journal at a later date. The rich details he noted gave much needed flavor to his travel account, increasing its value to Marchant and to others. The fair copy that exists in his journal, without lines crossed out or emendations made

54. Marchant Journal, November 19, 20, 1771.

in margins and above or below the line, suggest that Marchant made notes on scrap paper as he went through his day and then recopied, probably each evening. Like many attorneys and courtroom observers of his day, Marchant may have used a personal shorthand to record speeches as they occurred, which he could then recall with accuracy later, and then recopy. Although these interim notes no longer exist, the clarity and clean nature of the final copy indicates that Marchant most likely worked from such notes as he crafted his journal every night.

London Courtrooms and Bureaucrats in Action

Oddly enough, Marchant had better luck seeing justice at work in Scotland than he initially did in London. Within his first month of living in London, Marchant attempted to enter the Old Bailey, but he could not get in. The courtroom “being full,” he determined that he must return when it was less crowded so that he could pay his way in, for admission, he wrote, was “never obtained without paying for it.” Following his return from Scotland, Marchant attended a variety of London courts, doing so at first in the company of Mr. Phineas Bond, a Philadelphian. At that time, Bond was a law student at the Middle Temple, and he or his family may have been known to Marchant from Marchant’s own earlier studies in Philadelphia. In January 1772, when a new court session commenced at Westminster, the two men went to the great hall to see the royal courts begin holding their Hilary term sessions.

As a lawyer, Marchant had witnessed the openings of many court sessions in Boston and Newport, but those seemed pale by contrast with what he saw in Westminster. Marchant wrote that when he and the young Mr. Bond arrived at Westminster Hall, there were “many Gentlemen, Barristers, King’s Council, Sergeants &c &c” and that “To secure a Seat in the Court of King’s Bench we went and put a Key or Glove up on [the] Seat we chose which made it secure.” This “reservation system” was an absolute necessity in the metropolis, but how did Marchant know what to do? Bond, the law student who had been frequenting Westminster as part of his own education, and who was already a long-term resident of London, doubtless instructed Marchant in this small point of courtroom etiquette.⁵⁵ The two men could then walk about the hall until the arrival of the lord chancellor and the other dignitaries.

55. Bond’s student journal, with copies of the cases he saw at Westminster, is deposited at the Historical Society of Pennsylvania, in Philadelphia. Unfortunately, he does not record the



Figure 2. Charles Mosley, “The First Day of Term” (Westminster Hall, 1738) (London: Laurie & Whittle, 1797). Courtesy of Palace of Westminster Collection.

Marchant’s description makes clear that he was almost transported by the procession and finery associated with the ceremonial nature of court opening. He was far more impressed watching the judges process into the building than by any legal arguments that followed on that particular day. Marchant noted that after the lord chancellor appeared, he was followed by the “four Judges of King’s Bench Ld Mansfield Ld Ashton Ld Wills and Ld Ashurst.” After them were the “Judges of Common Pleas” whom he named in turn, even including in the list “The Rt Honb Sr

opening day arguments in *Somerset v. Stewart*. Bond occupied chambers in the Middle Temple, which he only quit in 1779. (His bond for relinquishing occupancy dated June 19, 1779, box XCIV, bundle IV, 8, regarding chambers in Middle Temple Lane No. 2, Middle Temple Archives).

DeGray” who could not attend due to the gout. His *Rider’s British Merlin* might have supplied the name of the missing judge, but more likely it was his acquaintance Bond who informed Marchant about DeGray’s ill health. The Common Pleas judges were, in turn, followed by the “four Barons of the Exchequer” who entered the hall in procession (whom he also named) and then each group of judges “retired to their several Courts and took their Seats.” Having earlier secured their seats with glove and key, Bond and Marchant went to observe the proceedings in King’s Bench; there, Marchant began taking notes on the proceedings. He recorded in detail the motions made in several cases, and even the exchanges between judge and councilor, as he did with one set of comments that went back and forth between Lord Mansfield and a barrister who wanted to adjust bail for his client.⁵⁶

Surprisingly enough, after this initial January foray, Marchant appears not to have ever gone to court in Bond’s company again, although he was himself an eager and steady enough attendee. Bond had great sympathy for the British government, going so far as to sever his connections to Philadelphia during the Revolutionary War, when he elected to remain in London and pursue a legal career. This must have been a fortunate choice, for Bond’s abilities as a barrister led to his eventual appointment as a bencher at the Middle Temple, and after the war, to his position as a British consul to America.⁵⁷ Perhaps it was their differences of opinion on the British government’s colonial policies that kept Bond and Marchant from becoming steady dinner partners as well as fellow courtroom attendees in the months that followed. An alternate possibility is that Marchant rarely settled in a single courtroom for long, often hopping from one forum in Westminster to another as his interest took him, whereas Bond may have felt constrained to hear a case through to its conclusion, as part of his studies. With multiple courtrooms under one roof, Marchant could pick and choose the most interesting cases he wanted to hear, without being concerned that he need hear any one case in its entirety. In any case, according to his journal, Marchant never hosted a dinner for Bond, nor do they ever appear to have crossed paths again except when dining with third parties.

The evening after the opening ceremonies at Westminster, was, interestingly enough, the only time Marchant dined with Mr. Holker, his solicitor.

56. Marchant Journal, January 2, 1772.

57. On Bond’s appointment to the Middle Temple bench, see Phineas Bond to William Eldred, Sub-Treasurer of the Middle Temple, November 26, 1811, box XCIV, bundle I, no. 59, Middle Temple Archives. Bond served as consul in Philadelphia, where he had many relatives and friends.

It was a typical eighteenth-century dinner for gentlemen of their station, but still noteworthy enough that Marchant described it in full. They feasted on fowl, bacon, rabbit, apple pie, custard, cheese, and good wine. Perhaps the ceremony surrounding a momentous occasion such as the opening of court in January inspired Holker to invite Marchant and Bond to share such a meal with him. Certainly Holker did not invite Marchant for a second occasion, which suggests that the ceremonial Westminster court opening was what prompted their one and only dinner together.

The following week, early in February, Marchant was busy visiting other courtrooms, venturing beyond Westminster, and occasionally going from one court to the next in a single day to listen to judges and barristers at work. Marchant heard various prize cases argued before the Court of Admiralty and described not merely the causes and their outcomes, but also the various lawyers who spoke in court. He specifically praised the “Learned Dr. Winn, Dr. Bunnell, and Mr. Forester” who argued some cases to which Marchant listened.⁵⁸ He ventured to the City of London to hear cases at the Guildhall later in the month.⁵⁹ But Westminster’s courts always pulled him back. He returned there to hear Lord Mansfield deliver a preliminary court ruling on a case involving a student of Cambridge, who wanted his case to be heard before King’s Bench. Whereas his college wanted the case to be dismissed, the court determined that it had jurisdiction, and agreed to take the case. That same day, Marchant left King’s Bench and went to listen to arguments before the Court of Chancery, and then later went to the Court of Common Pleas.

In moving from court to court, and even building to building, he may have been drawn by the eloquence of various speakers. Perhaps he was attracted to specific arguments, or the deployment of legal arguments that he might one day use back home. The close proximity of all the courts, with several in Westminster Hall, meant that there was little hardship in migrating from one courtroom to another; a lull in the action in one court could be filled by walking to the other end of the hall to hear a case that was still ongoing. No matter where he went, however, Marchant was not uniformly impressed, and he could be quite harsh in his personal opinions about the appearance and behavior of judges. He seemed most approving when Lord Hillsborough and the Board of Trade were hauled over the coals by lawyers of the Penn family in a case

58. Winn, Bunnell, and Forester, despite their eminence in Marchant’s opinion, are unmentioned by Allyson May, *The Bar and the Old Bailey, 1750–1850* (Chapel Hill: University of North Carolina Press, 2003). Attempts to trace them through the *Dictionary of National Biography*, the Parliamentary History papers, and other biographical sources have had no success.

59. Marchant Journal, February 14, 1772.

about some Delaware lands, noting that “his Lordship did sweat abundantly” when the reasoning used in the Board of Trade report was thoroughly abused by the Penn advocates.⁶⁰ In general, Marchant seemed least impressed when observing the Court of Common Pleas in action. During his first visit to hear a case there, Marchant said that “Such a Gouty Set of Men I never saw together as the chief Justice, Glynn &c&c in short, all the Sergeants looked miserably.”⁶¹

Just as he found it difficult to obtain access to the Old Bailey, Marchant likewise had to take extra pains to view a parliamentary debate. “It is with great Difficulty a Seat in the House of Commons is obtained,” but Marchant finally managed to get one in February 1772, where he heard “the greatest debate,” which lasted nine hours, on a petition from the Church of England’s clergy to be exempt from signing the Thirty-Nine Articles. “The petitioners had all the best speakers” and even the solicitor general, Wedderburn, “was strongly for the petition.” As with so many of the lawsuits he saw in court, Marchant did not reveal the conclusion to the debate or the outcome of the petition, but begged his friend Ezra Stiles to wait for a further letter from another mutual friend, Dr. Furneaux, to provide the fullest details on the debate.⁶²

In between flitting from courtroom to courtroom, Marchant met intermittently with the Earl of Hillsborough to discuss colonial matters. It was a slow learning process for Marchant, who was, after nearly six months, only beginning to discern the multitude of parties that prevailed, both within and without government. “The City are in three or four Divisions” and sometimes the divisions between parties seemed to exist only to further party spirit rather than a principle: “their jealousy destroys one another—and so ruins their cause.”⁶³ The complexities of developing party loyalties were never terribly clear to Marchant, who seemed to view

60. Quote from Lovejoy, “Henry Marchant and the Mistress of the World,” 389.

61. Marchant Journal, February 3, 1772.

62. Henry Marchant to Ezra Stiles, February 26, 1772 (Ezra Stiles correspondence, Beinecke Rare Book and Manuscript Library, Yale University). Furneaux was considered by Stiles to be one the “principal dissenting Ministers in London.” See Dexter, ed., *Literary Diaries of Ezra Stiles*, I: 304, December 4, 1772. The debate Marchant witnessed was one of the most heated in the early 1770s “over the requirement that dissenting ministers and schoolmasters should, as a condition of their registration, assent to the doctrinal articles of the Church of England.” G. M. Ditchfield, “How Narrow with the Limits of this Toleration Appear?’ Dissenting Petitions to Parliament, 1772–1773,” *Parliamentary History* 24 (2005): 91. See also Ditchfield, “The Subscription Issue in British Parliamentary Politics, 1772–79,” *Parliamentary History* 7 (1988): 35–80.

63. Henry Marchant to Ezra Stiles, September 21, 1771 (Ezra Stiles correspondence, Beinecke Rare Book and Manuscript Library, Yale University).

all political groups with some disdain for their unwillingness to assist the colonists with their problems.⁶⁴

“To attend a tryal”: *Somerset v. Stewart*

After his meeting with Hillsborough, on February 7, 1772, Marchant returned once more to King’s Bench, this time in company with Arthur Lee (of the famous Virginia family and author of the *Junius Americanus* newspaper articles) to begin hearing the cause of “James Sommerset a Negro” who had been apprehended by his master, a Captain Stewart.⁶⁵ The first notes he made signaled nothing special about this particular cause: as usual, Marchant wrote in his journal that he went to Westminster “to attend a tryal.” However as distinct from other cases that he had heard during his sojourn in London, as well as all the others that he had heard in that same month, Marchant decided to create a full report and brief of the case. Whereas other cases in Marchant’s journal sometimes garnered a half-page of attention and the majority omitted party names, by contrast, *Somerset v. Stewart* occupies some twenty pages of Marchant’s journal, and clearly made an impression on this accomplished lawyer from the very first hearing. He recorded the plaintiff’s and defendant’s names at the outset. His attention was obviously riveted by the arguments being made (which he noted with increasing levels of detail) and he pointed out which barristers offered specific arguments and in what order, and for how long each man spoke. Marchant’s lengthy brief of this particular case reveals that it caught and held his legal attention, for he could see what the potential consequences might be depending upon the case’s outcome. After Marchant’s brief of the case facts and the arguments made, he recorded his own lengthy opinion (something else he rarely did through the rest of his journal), which suggests how strongly the *Somerset* issues held him in thrall. As a resident of southern Rhode Island, and therefore involved through

64. For all the letters of introduction and standing that Marchant had, it was not until January 1772, nearly five months after his arrival in London, that he finally gained an audience with John Pownall, Secretary of the Board of Trade, and then with Earl Hillsborough, who seemed confused about the nature of the various counterclaims being made by and against Rhode Island. Lovejoy, “Henry Marchant and the Mistress of the World,” 384–86.

65. Arthur Lee, as *Junius Americanus*, wrote a series of tartly worded articles that appeared in British newspapers between 1769 and 1776 that criticized British government policy about the colonies. See J. A. Leo Lemay, ed., *Essays in Early Virginia Literature Honoring Richard Beale Davis* (New York: Franklin, 1977), 209. On Lee’s other London exploits, see John A. Garraty and Mark C. Carnes, eds., *American National Biography*, 24 vols. (New York: Oxford University Press, 1999), 13: 356–57.

family, friends, and clients in the transatlantic slave trade, the issue of a slave's status would have obvious interest to him.⁶⁶ Most Rhode Island slave traders also engaged in banking, insurance, and real estate speculation, making it difficult for a lawyer to sever all ties with slave merchants short of moving to another colony altogether.⁶⁷ Marchant's desire to take such a step seems unlikely. Rhode Island census data reveal that, in the 1770s, Marchant himself was the owner of two slaves.⁶⁸

Earlier scholars of the *Somerset* decision have devoted little or no attention to Marchant's first-hand observations on the case, in part because the journal was not widely known to legal historians. Colonial historians have used the diary, as Lovejoy and Cole did, to explore the cultural or political nature of Marchant's adventures; it was one of many travelers' accounts that, because of its detail, attracted scholarly attention. Legal historians, on the other hand, have explored the English sources about *Somerset* as thoroughly as possible, which is how Marchant's journal (created by a temporary legal tourist and archived in the United States) escaped notice for so long. Although it does not challenge the prevailing interpretation given to Lord Mansfield's opinion, Marchant's journal does provide additional corroborating evidence about how the trial proceeded. Moreover, it gives us a new source about the earliest trial proceedings, which were unavailable to previous scholars. Although Marchant listened to many cases during his sojourn to London, his journal entries are most passionate when discussing

66. In the eighteenth century, Rhode Islanders controlled between sixty and ninety percent of the American trade in slaves; see Jay Coughtry, *Notorious Triangle: Rhode Island and the African Slave Trade, 1700–1807* (Philadelphia: Temple University Press, 1981), 25. Of all New England colonies, Rhode Island had the highest proportion of slaves in its population; between six and twelve percent of all persons in Rhode Island were enslaved prior to the Revolution; see Arthur Zilversmith, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: University of Chicago Press, 1967), 4.

67. Rhode Island's involvement in the slave trade permeated all levels of society. "The occupational listings in the Providence directory indicate that a large number of slave-traders would not have been considered merchants at all. Among these are various tradesmen and/or artisans, including a machine maker, a mason, a blacksmith, a tobacconist, a baker, a painter, a hatter, a carrier. . . and two paper-hangers. . . A wide variety of occupations also characterized [slave] traders in other Rhode Island ports." Rachel Lin, "The Rhode Island Slave-Traders: Butchers, Bakers and Candlestick-Makers," *Slavery and Abolition* 23 (3) (2002): 30–32.

68. *Rhode Island Census, 1774* (Provo, UT: The Generations Network, Inc., 1997). Data in database drawn from John R. Bartlett, *Census of the State of Rhode Island 1774* (Providence, RI: Knowles, Anthony & Co., State Printers, 1858), <http://www.ancestry.com> (accessed May 3, 2008). We are indebted to John Sweet for his assistance with this material. On Marchant's slave ownership, see Henry Marchant to Richard Ellis, April 19, 1770, f. 92–93; March 5, 1771 (f. 225, Henry Marchant Letterbook 1769–1771, Rhode Island Historical Society, on the sale of Marchant's slave boy Quam by Ellis).

this one. The case he heard would become one of the most important, and most debated, precedents on colonial slavery. Marchant probably realized how many New England friends and colleagues would quiz him about it upon his return. His notes provided information for many people; for example, he sent a copy of his courtroom observations to Benjamin Franklin. Marchant had been on his London adventure for over six months when he sat in Westminster Hall on February 7, 1772.

Somerset v. Stewart was brought on behalf of the slave James Somerset, using a writ of habeas corpus, to effect his release from being held on board ship while that ship was in London's docks. If he were forced to remain aboard the vessel, it seemed likely he would be returned against his will to Jamaica, where he could be sold and treated as a slave in the future. Marchant's initial comment on the case laid out the facts and put the central question squarely: "James Summerset a Negro who being apprehended by his Master Capt. Charles Stewart and put on board of a ship in order to [effect] his being conveyed to Jamaica, brought his Habeas Corpus with a View of trying the Point how far a Negro or other Black, is a Slave in England & consequently entirely at his Masters Disposal."⁶⁹ Marchant's account suggests he either immediately recognized that this was an important case, or was alerted to its importance because of the buzz surrounding it in London legal circles. It is the only extant firsthand and detailed account of the opening arguments made by Sergeants William Davy and John Glynn on Somerset's behalf, the initial arguments made for his freedom.

In his notes, Marchant recorded that "Mr. Sergeant Davy spoke first on the part of the Negro, and continued his Argument for about two Hours and a Half." His account of Davy's argument is consistent with a more abbreviated transcript created by Granville Sharp who was also present in the courtroom but who wrote only a single sentence about Davy's argument.⁷⁰ Davy started with the origins of villeinage in England, arguing that "at this Day no man could be a slave in England." Using an argument that he may well have known would not work, Davy also invoked Christianity as a further reason that Somerset must be freed, urging for his purpose that Somerset had been baptized in 1769. But if baptism was inadequate to confer freedom, then Davy went further and argued that status and place were inextricably bound together. This was at the heart of Davy's argument, and Marchant recognized the essential nature of this point. Marchant,

69. Marchant Journal, February 7, 1772.

70. Prince Hoare, *Memoirs of Granville Sharp Esq.* (London: Henry Colburn and Co., 1820), 77–78. [Available through Google Books: <http://books.google.co.uk/> <accessed May 12, 2008.> Sharp's longer transcription is devoted principally to Hargrave's arguments.

paraphrasing Davy, reported that he said “the making of Slaves was merely local wholly dependant on the Laws of particular Place. And that Slavery is created only by Colony Government.” Marchant went on to record in his journal what may be a verbatim quote from Davy’s argument, and certainly one of the most famous ideas to come out of the case: “That any Slave being over in England, that any Air he breathes made him a free Man, that is, One that has a Right to be governed by the Laws of the Land and claim their Benefit equal with any other. . . .” Marchant also noted the strident tone of Davy’s argument when the barrister suggested that to rule slaves were free on British soil would discourage “slave prospectors” from bringing them over. According to Marchant, Davy concluded by hoping, at the end of the two and a half hours, “after many further observations, that the C[our]t would concur with Him in Opinion and order Summerset [sic] to be discharged.”⁷¹

Having recorded Davy’s arguments, Marchant turned next to outlining the comments made by Sergeant Glynn, who followed. Making a considerably shorter statement than his colleague, Glynn opened by telling the Court, “My Lords, I am of the same side with my Brother who spoke before me.” Quickly praising Davy’s research and statements on behalf of freeing Somerset, Glynn asserted that no court in England would rescind the writ of habeas corpus and send him back into bondage. He claimed “This is indeed a question of Liberty.” Further, Glynn asserted that “The Colonies convenience is no Argument for Admission of Slavery here. If they find it still a Convenience let them keep their Slaves there.” Glynn’s condemnation of expanding colonial slavery to the mother country clearly appealed to Marchant, who briefly stopped his transcription to comment that Glynn “gave much force to the Arguments” made by Sergeant Davy. “He was very sensible solemn & affecting & concluded with saying he hoped the Court would be as clear as he was himself in discharging the Negro.” John Dunning and James Wallace were “on the other side” and ready to argue on behalf of Charles Stewart, the owner, but before they could speak, Lord Mansfield ordered the case held over until Easter term, claiming that it could not be properly attended to “without too much interfering with the ordinary Business of the Court.”⁷²

Here, Marchant ended his first summary, and he interestingly did not mention Mansfield’s subsequent comments. We know of those remarks from the papers of Granville Sharp (also present in the courtroom) who quotes Mansfield as saying that “If the merchants think the question [meaning, the transit of slaves from the colonies through Britain] of great

71. Marchant Journal, February 7, 1772.

72. *Ibid.*

consequence to trade and commerce, and the public should think so too, they had better think of an application to those that will make it law. We must *find* the law; we cannot make it.”⁷³ This statement, of course, foreshadowed the most famous statement attributed to Mansfield in *Somerset v. Stewart*: that slavery can only exist by the creation of positive law. One can only speculate about why this important comment by Mansfield did not make it into the American lawyer’s notes.⁷⁴

Quite possibly, it is because Marchant seemed more interested in the fact patterns of cases, what the barristers said during the arguments, or what methods of persuasion they employed to sway their listeners, rather than in preliminary rulings by judges or the actual outcomes of the cases as such. His analysis and recording of the day’s events (focused much more upon Davy and Glynn the barristers than upon Mansfield the judge) suggest that Marchant paid more attention to how barristers argued than to the comments offered from the bench. But as he was a lawyer himself, this might not be so surprising after all. Perhaps this explains why he did not come back to listen to the final adjudication of *Somerset v. Stewart* before Mansfield and the others; having heard the arguments, he had already witnessed the part that interested him, as a lawyer, most about the proceedings. Or perhaps the abrupt end to the hearing caused him to disregard any comments coming from the bench. Marchant was unlikely

73. “The Whole Minutes of the Trial in MS” held by the African Institution (London) is quoted in Hoare, *Memoirs of Granville Sharp, Esq.*, 87–88. James Oldham makes use of full reports in biographies of Granville Sharp as well as previously unpublished Mansfield manuscripts found in Lincoln’s Inn, which contain several notes about the case. See Oldham, *Mansfield Manuscripts*, 2: 1229–30 and n. 50. On the difference that exists between Sharp’s and Marchant’s versions, there is no way to determine which might be more accurate without a third source to provide corroboration for one account or the other.

74. This section of Marchant’s critique on the arguments in *Somerset* may also reflect his fear, shared by other observers on both sides of the slavery question, that Mansfield sought to avoid answering the bigger question of the long-standing problem in English slave cases: whether or not slavery decisions made in London would apply in the colonies as positive legislation. Prior to *Somerset*, the precedents concerning slavery in England were unclear at best concerning the seventeenth-century’s “new property,” the African slave. The earliest case, *Butts v. Penny* [King’s Bench (hereafter K.B.) 1677], posited that trover was an available remedy for the recovery of slaves but declined to treat slaves as property. This was repudiated later in the Court of King’s Bench under Chief Justice John Holt in two decisions: *Chamberlain v. Harvey* (K.B., 1697) and *Smith v. Gould* (K.B., 1705–06), in which Holt ruled that whereas some type of trespass might be available, trover was not the appropriate remedy. Therefore, Holt’s rulings implied that slavery was a limited right, a custom in the colonies, but not an absolute property right. See Wiecek, “The Legitimacy of Slavery,” 90–91, and Oldham, “New Light,” 49. On the “new property of slavery,” see Jonathan A. Bush, “The British Constitution and the Creation of American Slavery,” in *Slavery and the Law*, ed. Paul Finkelman (Madison, Wisc.: Madison House Publishers, 1997), 379–418.

to know that Mansfield really hoped to get rid of the case, that he had privately urged the manumission of Somerset in order to moot the case—a sentiment clearly reflected by his warning comments to commercial interests—but it was a hope that Lord Mansfield held in vain, for Stewart did not give Somerset his freedom before the next hearing. Neither the abolitionists nor the West Indian merchants were going to let this matter drop. One final alternative is that this was in keeping with how Marchant observed trials in England, but not in the colonies; in the colonies, he might well be equally or even more attentive to what a judge said, rather than to a single lawyer. He might wish to know what a specific colonial judge would do when hearing a particular type of case, should the same fact pattern recur in the future.

After summarizing the day's arguments in his journal, Marchant then recorded his own personal reaction, analyzing the lawyers' presentations but also giving vent to his own views on the matter. This is one of the few places in his journal where Marchant editorialized upon a court case and the lawyers he witnessed in action. As such, it represents an unusual opportunity to gauge his reactions to the legal world he was now moving within. After the first day's arguments, it seems clear from his diary that he was persuaded James Somerset should go free. He wondered if the "Friends" who helped Somerset file for the writ of habeas corpus were Quakers, and in this, his American background was showing; in the colonies, Quakers were the most ardent supporters of abolition, a cause that had yet to become mainstream political fodder in either England or the colonies. The ideological leanings that would soon put him on the side of the patriots in the American Revolution are very much in evidence in his reflections on the case. "How well Englishmen can talk upon the Subject of Liberty while they retain Themselves but the Shadow of it. I could wish Americans had never fallen into so disagreeable and baneful a Trade as that of buying and selling a Part of the Human Race, as much entitled to the enjoyment of Freedom as Themselves," he lamented—perhaps a tad disingenuously, given that he himself was a slaveholder.⁷⁵

Marchant certainly subscribed to an idea current among American elites, that the slave trade was a foreign imposition, reluctantly imported by the colonies. Lashing out at the failing of the imperial powers and reflecting his own anger over the spreading of imperial costs to the American colonies during the 1760s, Marchant continued that "if Americans are justly chargable [sic] with this unnatural Trade, They certainly borrowed the Idea from Europe—and never could have supported Themselves in the Trade had not Great Brittain [sic] found her Advantage and Interest in

75. Marchant Journal, February 7, 1772.

supporting it even with Her military Engines.” Marchant mused, “What Acts of Parliament has Brittain made for the securing this Trade and for the most beneficially conducting it to her own Emolument?” Marchant’s rhetorical question showed how the issues of *Somerset v. Stewart* touched a throbbing nerve: how the British government benefited, even indirectly, through the slave trade, was of pressing concern to a man seeking compensation for Rhode Island’s Crown Point expenditures.⁷⁶

While condemning chattel slavery as antithetical to liberty, however, Marchant pondered the problems that might arise if Mansfield and the King’s Bench judges decided to draw arbitrary or artificial distinctions between property rights in chattel slavery on British soil versus American soil. Marchant was hardly an out-and-out abolitionist; like many other colonial slaveholders of the time he had a more theoretical than literal appreciation of liberty. More often than not in Marchant’s case, slaves only benefited from that theoretical aspect. Regardless of his own personal contradictions about liberty, his lawyerly love of consistency helped him spot a flaw in the arguments being made tying rights to a person’s location. As a resident of the colonies, Marchant worried about how British jurists and politicians were increasingly creating distinctions between the rights of American colonists and the rights of Englishmen living in Britain.⁷⁷ Urging consistency in handling rights, Marchant in his journal recorded that if *Somerset* were given his freedom, “Britain [must] then be constant and discourage Slavery entirely [meaning, throughout the empire as well as at home] or take their Part of the Shame and by no Means under a plausible Pretence to more noble Ideas of Liberty than their Neighbors. . . that British Soil and British Air differs essentially from the Soil and Air of America’s cheat[s] an honest American of his Slave.” As much as Marchant seemed sympathetic to the abolition of slavery in principle, here he showed ambivalence about the effect such a ruling based on this principle might have upon American slaveholders. In fact, his next comment reinforces the inference that Marchant supported abolitionism if it could be done at the same time as providing a clear and consistent legal principle. He wanted to see *Somerset* freed, but he hoped that Mansfield’s ruling would “not draw Circles in particular Spots, with magic Wands and juggle all without it [i.e., the colonists] out of their Property.” Marchant, therefore, hoped that Mansfield would deliver a definitive statement about the status of property rights regarding slaves

76. *Ibid.*

77. See comparable argument in Daniel Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World* (Chapel Hill: University of North Carolina Press, 2005), chs. 2 and 3.

everywhere within the empire. Ironically, for a slaveholder, he preferred the clarity of an absolute rule that would terminate property rights, even his own, in human chattel over a vague statement that would protect slave ownership but only in select parts of the empire. With this observation concluded, he signed his name at the bottom of the entry with a flourish and closed his record of the day's events.⁷⁸

Interestingly, Marchant's desire to have a black-and-white ruling on the issue of slavery may accord with his role as colonial agent seeking to have Rhode Island's compensation handed over. As a colonial, he may have been more interested in British government officials giving precise definitions and predictable boundaries to the legal world, rather than having an absolute preference for outcomes that would favor him. Being forced to endure delay after delay by members of the Board of Trade, whose wavering views on compensation changed with the personnel, may have had this effect upon Marchant. Lacking direction, always waiting for clear guidance that never seemed to come, must have been incredible frustrating.

In Easter Term, May 14, *Somerset v. Stewart* appeared again in Marchant's journal, when he "went to Westminster Hall" to hear the next round of arguments on behalf of "Mr. Stewart's Negro Sommerset upon Habeas Corpus." This is the point at which the published record also picks up the story. Capel Lofft's transcription of the arguments in the case begin on this date, and were subsequently published in *English Reports*. Marchant missed the arguments of the barrister Mansfield (no relation to the judge) the day before, but Lofft's published record and contemporary accounts suggest that Marchant arrived just in time for the showstopper, when youthful Francis Hargrave made a stunning argument on Somerset's behalf. Marchant wrote that "This Day Mr. Hargrave a Gentleman of about three or four Years Standing first spoke on the Part of the Negro." Both contemporary and secondary accounts of Hargrave's arguments describe it as a virtuoso performance; legal historian James Oldham asserted that Hargrave's "erudite and intricate argument on Somerset's behalf" catapulted him to public notoriety. Oldham also urged that Lofft's account of Hargrave's "learned Argument" was not a verbatim account but one that was compiled and published after the trial for the benefit of posterity.⁷⁹

78. Marchant Journal, February 7, 1772. On Sharp and abolitionist ideology in the eighteenth century, see David Brion Davis, *The Problem of Slavery in the Age of Revolution: 1770–1823* (Ithaca, NY: Cornell University Press, 1975), 469.

79. Marchant Journal, May 14, 1772. Oldham, *Mansfield Manuscripts*, 2: 1232. On the subject of Lofft's account of Hargrave's argument, Oldham points to *State Trials*, which reprinted Lofft's treatment verbatim but attributes Hargrave's quotation from *Blackstone's Commentaries* incorrectly to the first edition published in 1765. Oldham indicates that, in

Marchant's journal entry for May 14 shows that Hargrave's performance clearly impressed him as well, up to a point. When Hargrave spoke, Marchant wrote that the barrister "had studied to convince Us that he had read & collected every Thing upon the Subject from History, & Civilians, the Laws of England, and the present Ideas & Laws of the different Nations in the World upon Slavery. . . ." However, Marchant then critiqued Hargrave's interpretation of the information the barrister had gathered, claiming that his performance was tinged "with rather flat Observations & Declamation, but too diffuse & prolix to be agreeable [sic]." His reaction stands in contrast to the praises heaped upon Hargrave by contemporary abolitionist observers. Even Charles Stewart, the man who stood to lose his slave if Hargrave's arguments succeeded, seemed quite impressed by Hargrave's persuasive abilities. Writing to James Murray on June 15, Stewart updated his correspondent about "how the negroe cause goes on," referring to *Somerset v. Stewart*. Although Stewart said that he did not attend the May 14 hearing, he wrote that he had been "told that some young Council flourished away on the side of liberty and acquired great honour."⁸⁰ After he finished commenting on Hargrave, Marchant noted that the next speaker was a "Mr. Allen from Barbadoes but educated here." Allen's argument did not impress Marchant much, who observed that "the Subject [why Somerset should be freed] had been well exhausted," and that Allen's comments were mercifully short. Marchant did grasp the significance of this argument, noting how nervous the barrister was and remarking that "I esteemed his only true Point The Municipal Laws of the Country." In the colonial lawyer's estimation, this "gained much Credit."⁸¹

fact, the quotation from Lofft which he attributes to Hargrave comes from the second edition, published in 1766: "The spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, that a Slave or a Negro, the moment he lands in England, falls under the protection of the laws, and so far becomes a freeman; though the Master's right to his service may possibly continue." The language of the 1765 edition is significantly different, using these words: "the moment he lands in England, falls under the protection of the laws, and with regard to all natural rights becomes *eo instanti* a freeman."; see Oldham, *Mansfield Manuscripts*, 2: 1233; see also Francis Hargrave, *An Argument in the Case of James Sommersett a Negro, lately determined by the Court of the King's Bench* (original pamphlet published in London: 1772, held by the Library Company of Philadelphia).

80. Marchant Journal, May 14, 1772; Charles Stewart to James Murray (no relation to William Murray, Lord Mansfield), June 15, 1772, *Massachusetts Historical Society Proceedings* 43 (1909–1910): 451.

81. Capel Lofft spelled Allen as "Alleyn"; see 98 *English Reports* 502 (K.B., 1772). According to Lofft's accounts in *English Reports*, Allen's commentary was laced with denunciations of the inhumanity of holding men in bondage, but his main point was that "slavery is not a natural, [but] 'tis a municipal relation; an institution therefore confined

Marchant left Westminster before the arguments ended that day, writing in his journal that “Mr. Wallace King’s Council then rose against the Negro,” but Marchant had to go to the Treasury “on Colony business but found nothing done.” Sadly, he missed an important intermediate episode in the Somerset cause during which Lord Mansfield interrogated James Wallace about his arguments on behalf of Stewart. After Wallace made the assertion that the relationship between a white master and a black slave might be well-maintained “on the ground of a contract of Master and Servant” Mansfield “contradicted this assertion in the strongest terms” saying it was “repugnant and destructive to every idea of a contract between the parties.” It was a reflection of Mansfield’s great concern about the institution of slavery as well as the sanctity of contract formation, although Blackstone’s *Commentaries*, of only fifteen years earlier, continued to assert that slaves and masters could enter into relations of a contractual nature.⁸²

Marchant was back at Westminster Hall on May 21 when the *Somerset v. Stewart* arguments resumed, observing that the case was now popularly called “the Negro Liberty Cause.” By now, Marchant certainly recognized the importance of the case in a transatlantic sense, and may have realized he would be closely questioned about it when he returned home. When Ezra Stiles read Marchant’s diary several months later, he himself recorded that the case was commonly referred to as “the Liberty Cause.”⁸³

In his journal, Marchant noted that he had heard most of the arguments “on the Part of the Negro Sommerset,” and now listened to John Dunning speak for “about two hours...on the Side of the Master Mr. Stewart.” Dunning’s role was somewhat anomalous, given his actions of the year before. In 1771, Dunning had argued before Mansfield and the King’s Bench in the unreported case of *Rex v. Stapylton*, the most important slavery case Mansfield heard prior to *Somerset v. Stewart*, and one in which Dunning urged the court to free Thomas Lewis, a man claimed as a slave by his former master.⁸⁴ Mansfield instructed the *Rex v. Stapylton*

to certain places, and necessarily dropt by passage into a country where such municipal regulations do not exist.” That slavery should not be viewed as normal or natural was the essential point that the abolitionists wished to have stressed, and certainly the argument that slavery could not exist except by positive law informed every interpretation of what Mansfield would later do—or might have done—in his ruling that freed James Somerset later in the year. Marchant Journal May 14, 1772; 98 *English Reports* 502 (K.B., 1772).

82. Marchant Journal, May 14 and 16, 1772; *The Craftsman: Or Say’s Weekly Journal*, May 16, 1772, quoted in Oldham, *Mansfield Manuscripts*, 2: 1235.

83. Dexter, ed., *Literary Diaries of Ezra Stiles*, I: 319, December 4, 1772.

84. Because the case is unreported, we have relied upon James Oldham’s excellent synthesis of the case. Oldham made use of full reports in biographies of Granville Sharp as well

jury to render a special verdict if they would free Lewis, which they did, permitting Mansfield to avoid what he most feared: a definitive statement by a jury on the status of all slaves in England. Seeming to favor permanent ambiguity on an issue that affected the sanctity of property itself, Mansfield wrote in the aftermath of the *Rex v. Stapylton* decision, "I hope it never will be finally discussed. For I wou'd have all Masters think they are Free and all negroes think they were not because they wo'd both behave better." However, such shrewd avoidance could not be maintained forever. It was, as historian James Oldham put it in his biography of Mansfield, "the quiet before the storm that broke in *Somerset*."⁸⁵

All of Mansfield's seemingly contradictory feelings from 1771 were on display when Marchant saw Dunning rise to argue the cause of slave owner Charles Stewart, with most of his audience (although, at the time, possibly not Marchant) well aware of Dunning's great performance to free Thomas Lewis only the year before. Adding to the pressure was the (by now) common knowledge that this had become a showdown between abolitionists and the West Indian merchants in a cross-cultural battle over chattel slavery. Dunning's performance, on behalf of Stewart the slave owner, did not impress him. Marchant recognized a weak argument when he heard one. A comparison of Marchant's account with Capel Lofft's published report of Dunning's argument reveals that the American lawyer's criticisms were probably right on the mark. According to Lofft, Dunning compared slavery to the marriage contract, delved into comparative slave law, and explored the state of villeinage in England (in which he refuted Hargrave's earlier arguments that abolition of villeinage abolished slavery on English soil). Dunning maintained villeinage had not been abolished, only that there were no subjects on which it could be exercised at present. Marchant's account pulls out the threads of the argument he found most worthy of scorn. Referring to Dunning, Marchant scoffed that "He insisted that the Idea and Fact of Slavery in some shape or another, existed in every State in Europe & pointed out more particularly in Holland" that slavery existed as a punishment for crimes. Dunning "insisted there was nothing in a State [of slavery] against the Law of Nation[s] or of God." Marchant then repeated the point Dunning made (which Lofft's account does not), that "We have no Declaration against it in the Law of God."⁸⁶

as the previously unpublished Mansfield manuscripts found in Scone Palace, Perth, Scotland, which contain several notes about the case; see Oldham, *Mansfield Manuscripts*, chapter 21 and especially 2: 1225–26.

85. Oldham, *Mansfield Manuscripts*, 2: 1228.

86. Marchant Journal, May 21, 1772; 98 *English Reports* 502 (K.B., 1772).

The arguments Dunning made about the social contract in a society seemed to bother Marchant more than any other single comment from his presentation. Continuing his transcription, Marchant wrote that Dunning said “a Man might voluntarily part with Their [sic] Liberty in this Instance as well as in Others, in all States, there were different Laws, and more or less of Common Rights given up.” Comparing this to Lofft’s version reveals that Marchant’s sense of the argument was correct if not a verbatim transcription. Marchant added a comment he attributed to Dunning that does not appear in Lofft’s version: “He said none of the Authors [meaning, political theorists] he produced were in agreement but rather for Him, etc. etc.” Looking back at Marchant’s account of Davy’s and Hargrave’s earlier arguments, it is apparent that the idea that a man might voluntarily surrender his liberty bothered him, and that using the laws of other European nations as a justification concerned him even more. This became particularly obvious in his earlier February journal entries in which he blamed the horror of human bondage on Europe and cursed the English for foisting it onto the American colonies. We will never know if this argument, lethargic in delivery and offensive in content, is what sent Marchant out of the courtroom that day, but he did not stay to hear the rebuttal from Sergeant Davy. With a final entry in his journal that Dunning’s “argument was too long for Memory to be particular in,” he wrote that he left Westminster, walked past the royal palace, then went “to dinner, and to Drury Lane to see Mr. Garrick as Sir John Brute in the Provoked Wife.”⁸⁷

Marchant’s lack of enthusiasm for Dunning’s arguments was shared by others. In a letter dated June 15, reporting on the case bearing his name, Charles Stewart himself characterized his attorney’s arguments as “dull and languid,” claiming that Dunning “would have made a much better figure on that side also” (meaning, arguing on behalf of Somerset rather than against him). He included one further tidbit in the letter, something Marchant missed, either because he had already left the courtroom on May 21, or did not deem it significant. After Dunning’s lackluster performance, Stewart added that speaking of the case at hand, “Lord Mansfield said it was a cause of greatest importance, that great inconveniences and ill consequences must attend the decision of it either way.” He also mentioned Mansfield’s clear desire that the matter be settled out of court between the parties, and “hinted at emancipating the slave, and advised the West India merchants etc. to apply to Parliament for an act farther securing their property.” In this letter, written nearly a month after the Dunning arguments, Stewart speculated that “Upon the whole...every body seems to think it

87. Marchant Journal, May 21, 1772.

will go in favour of the negro,” adding that the West Indian merchants and planters had taken control and “I shall be entirely directed by them in the further defence of it,” suggesting that Stewart, the slave’s owner, had become a pawn in the larger game of slave property being waged behind the scenes. One last comment by Stewart suggests how Dunning suffered for his part in the case, and tends to confirm Marchant’s version of affairs. Describing the newspaper’s rather tolerant treatment of himself despite his refusal to manumit Somerset, Stewart said that he was “very sorry for the load of abuse thrown on L[ord] M[ansfield] for hesitating to pronounce judgment in favour of freedom. Dunning has come in also for a pretty good share for taking the wrong side.”⁸⁸

Marchant’s entry on May 21 was his last reference to *Somerset v. Stewart*. He was not present when the decision was handed down in June, and although he remained in London until late July, he made no mention in his journal of the case, the attorneys, or Mansfield again. Sadly, then, we cannot compare a Marchant version of Mansfield’s decision to other accounts so carefully studied by James Oldham and others. Marchant’s journal entries after May 21 are shorter, and concisely chronicle his day’s activities rather than offering analysis or commentary on what he thought about those events. Moreover, on the day Mansfield handed down his opinion in *Somerset v. Stewart*, Marchant was among City bankers and merchants, witnessing the financial meltdown of Fordyce and Company. According to Marchant, “Nothing has equaled this Calamity since the South Sea Bubble in 1720.” Nearly half a million pounds in credit disappeared overnight, and more than one London merchant connected to Fordyce committed suicide. Marchant noted that “several other Bankers and Merchants have filed [bankruptcy papers] & others expected to follow after.” Marchant mused that this tragedy “is but a prelude to a deeper Scene, which the Luxury, Folly & Extravagance of the Times, [and] the Madness of Paper Credit. . . must involve this country in.”⁸⁹

Distracted by this financial catastrophe, Marchant was not present on June 22, 1772, when Lord Mansfield, Chief Justice of the King’s Bench, handed down what became a landmark opinion in the case of *Somerset v. Stewart*. The case determined that, because he was on British soil, James Somerset no longer could be threatened with forcible deportation. After the fact, Mansfield’s opinion became a powerful weapon in the battle

88. Stewart to James Murray, June 15, 1772, *Massachusetts Historical Proceedings* 43 (1909–1910): 451.

89. Marchant Journal, June 22, 1772. The Fordyce collapse also appears in Charles Stewart’s correspondence, indicating how widespread the financial shockwaves spread through London.

against chattel slavery, used not only by British abolitionists but also by the American anti-slavery movement in the nineteenth century. Although the judgment did not make it into the musings of Henry Marchant's journal, Lord Mansfield's decision in *Somerset v. Stewart* became his most famous decision, known not only for what it did hold, but also for what it may not have held. Ultimately, Mansfield's ruling was quite narrow. In freeing James Somerset, Mansfield emphasized that all he did was to declare that no slave could be forced out of England against his will; any slave under such threat could petition for relief via a habeas corpus action. Despite his dismissal of Dunning's assertion that slaves could be party to their own bondage contract, the chief justice was careful to uphold the sale contracts for slaves: colonial slavery would continue to exist and English law would recognize master/slave relationships. Therefore, the only issue before Mansfield was "whether any dominion, authority, or coercion can be exercised in this country, on a slave according to American laws."⁹⁰

With the narrow scope of the question established, Mansfield then made his most famous pronouncements. "The difficulty of adopting the relation, without adopting it in all its consequences, is indeed extreme; and yet, many of those consequences are absolutely contrary to the municipal law of England." With that, the chief justice accepted the system of slavery. But he then concluded, "The state of slavery is of such a nature, that it is incapable of being introduced on any reason, moral or political; but only positive law, which preserves its force long after the reasons, occasion, and times itself from whence it was created, is erased from memory." And therefore, Mansfield delivered the dictum that would free James Somerset: "It's so odious, that nothing can be suffered to support it, but positive law."⁹¹ Although not explicit anywhere in the opinion, by implication one could easily infer that the chief justice had freed not only Somerset but all other slaves whose masters brought them to England. This implication became the root of the folklore that emanated from *Somerset v. Stewart*. As historian Ruth Paley put it, "Lord Mansfield's judgment in *Somerset* had been a masterpiece of decisive insubstantiality."⁹²

90. 98 *English Reports* 509; 1 Lofft 17.

91. *Ibid.*

92. Ruth Paley, "After *Somerset*: Mansfield, Slavery, and the Law in England, 1772–1830," in *Law, Crime, and English Society: 1660–1830*, ed. Norma Landau (New York and London: Cambridge University Press, 2002), 172. Although Marchant did not chronicle Mansfield's decision, his friend Benjamin Franklin had much to say after the decision was announced. See "The Sommersett Case and the Slave Trade," from *London Chronicle*, June

Elsewhere in London: Recording for Posterity

Somerset v. Stewart was not the only case that Marchant heard, although it dominated his journal for many pages, and Westminster was not the only place Marchant went to take in the spectacle of court proceedings. A week after listening to the first round of February arguments in *Somerset v. Stewart*, Marchant went to the Guildhall to hear cases tried before Judge Edward Willes of King's Bench, who was presiding over the petty causes of London's less fortunate residents.⁹³ A case that caught his attention was one for assault and battery, pleaded by Dunning for the plaintiff and by Lee for the defendant, over a scuffle in a bar. As Marchant recorded it, "it was very droll to see a Learned Judge, and able Counsellor & a solemn Sergt. With Clerks &c deeply engaged in. . . . Settling an Ale House Quarrell—The Judge, Council, Jury & All in high Laughter—The Action was for Tarring the Plts Cloaths, cramming smoking Pipes in his Mouth [and] kicking his Shins and pinching his Nose." The plaintiff's counsel, Marchant claimed, "entertained the Court about ten minutes with Comick Scenes all in Manner & Style of Drama." After Lee and a few witnesses were heard from, the affair was turned over to the jury. Dunning's "Comick Scenes" must have been convincing, because Marchant recorded that the jury remained "in their Boxes (for they seldom go out of them) [and] in less than one Minute gave in their Verdict" for the plaintiff.⁹⁴

The inclusion of cases like these in Marchant's journal suggest that the Rhode Islander was looking for more than arguments, precedents, or oratorical flourishes he could use in trials once he returned to the colonies. The case of the anonymous barroom brawl shared an important similarity with *Somerset v. Stewart*. Although *Somerset v. Stewart* was set down by Marchant in loving detail, complete with every argument and counterargument he witnessed, the case also provided Marchant with fodder for future conversations with legal colleagues, friends, and family back home. In similar fashion, the dispute argued by Dunning and Lee for their respective ale house clients gave Marchant an amusing anecdote he could recount using all the colorful specifics. His journal, in this instance, was meant

18–20, 1772 in *The Papers of Benjamin Franklin: Vol. 19, 1772*, ed. William Wilcox (Philadelphia: American Philosophical Society, 1975), 187–88.

93. Willes was the son of Sir John Willes, a member of the Common Pleas bench from 1737 to 1761. Trained at Lincoln's Inn, Edward Willes served briefly in the House of Commons as a member from Leominster in the 1760s before taking his place on the bench in 1768. He served there until his death in 1787; see Sir Lewis Namier and John Brooke, *The House of Commons 1754–1790*, 3 vols. (New York: Oxford University Press for the History of Parliament Trust, 1964), 3: 642.

94. Marchant Journal, February 14, 1772.

to be a sort of *aide-memoire* for him later, so that he would recall particular cases and use the story details to entertain his Rhode Island friends, as much as to remember certain funny instances for his own private amusement. Indeed the lack of legal specificity in Marchant's records about cases like these (omitting even the names of the plaintiffs and defendants) suggests that he did not intend to utilize them as precedents once he returned to legal practice in America. Instead, Marchant intended to hold some information back, he told a New England colleague by letter, and "reserve that for our Entertainment when blessed again at your hospitable Table or friendly Fireside."⁹⁵ Using his eyes as a legal tourist, and his journal to record the details, Marchant could later allow his family and fellow lawyers to see the English courts as he had seen them, in seriousness, in humor, warts and all.

His frustration and even disdain for some court proceedings becomes quite clear a few weeks later, on April 30, when Marchant described going to the House of Lords to hear them sit in appeal on a case that originated in the Scottish Court of Sessions. From Marchant's perspective, the case was most noteworthy for the amazing lack of attention that the lords present gave to the speakers.⁹⁶ In his journal, Marchant noted that the dispute was about the qualification of voters for elections, and that during the entire set of arguments, first by the Solicitor General and then later by the Lord Advocate of Scotland, of the very few peers observing the proceedings, Lord Mansfield "alone...gave any Attention." Scandalously, the other men present ignored the speakers by "walking about, talking or reading a News paper, [through] the whole Time of ye Argument." It made Marchant sadly reflect upon the right of appeal: what could it mean to have the right of appeal for cases from the colonies, when the judges were barely paying attention to the arguments being made? Marchant speculated that "in Matters of Great Concern There may be better Attention" paid, but on the whole, he considered that "ye whole Affair appeared like a Farce."⁹⁷ Given that he had attended quite a few farces

95. Henry Marchant to William Greene, February 25, 1772 (William Greene papers, Rhode Island Historical Society).

96. *Lords Journal*, xxxiii: 374 suggests that only three of a possible sixteen Scottish representative peers were present. The low attendance may have stemmed from the peers' perception that this was comparable to a family matter, or would be decided purely on political lines, such that the merits of the case as argued would be considered irrelevant. If Marchant attended the House of Lords early in the day, he may not have witnessed more lords who chose to avoid this early morning business altogether. Our thanks to the *LHR* anonymous reviewer, who brought this information to our attention.

97. Marchant Journal, April 30, 1772.

courtesy of David Garrick and the Drury Lane Theatre, the two types of spectacles may have seemed pathetically similar to him.

In May 1772, Marchant finally managed to get in to see a few cases at the Old Bailey. He first went to the Middle Temple to collect Arthur Lee, his companion at the outset of the *Somerset* trial, to accompany him. Upon their arrival at the Old Bailey, the two men were introduced to “Mr. Sheriff Wilks,” and then they heard cases about burglary. “Mr. Sheriff Wilks” was the celebrated John Wilkes, elected to Parliament several times but occasionally imprisoned for blasphemy and libel; he and his followers were highly critical of George III and his ministers. A staunch supporter of American liberties, Wilkes and his views were well known to Marchant. The first case Marchant heard at the Old Bailey was one in which two men were acquitted of burglary but convicted of stealing, and therefore sentenced to transportation, which would banish them to colonies overseas for their crimes instead of seeing them hanged. The second case, again with unnamed defendants, involved a set of men indicted for burglary, but in this instance one was acquitted whereas the other was sentenced to be hanged. No doubt the high point of the day for Marchant was not in watching the criminals squirm (for on an earlier occasion, Marchant had deliberately avoided going to Tyburn to watch an execution), but in receiving an invitation to dine with John Wilkes. The Old Bailey’s sheriff, aldermen, recorder, and staff ended their day at court by gathering for an evening meal. Social creature that he was, Marchant must have enjoyed the gathering that put him among legal colleagues in a more informal setting, just as he was accustomed to doing in Boston with other lawyers and judges.⁹⁸

More and more through May and June, Marchant merely wrote that he “went to Westminster Hall” and “spent an Hour” in one or the other of the courts, without providing details of what exactly he witnessed there. Law in London had become, after many months, simply part of his regular routine. Perhaps his days as a wide-eyed legal tourist among the various courtrooms had given way to a time of feeling more at ease with the people and procedures in them. Or possibly, Marchant’s time in London had grown more constrained, as he struggled to get British officials to give Rhode Island the compensation so long withheld. Whatever the reason, Marchant’s journal of May and June 1772 no longer contained lengthy details about the cases he heard argued, or the legal professionals he saw at work. Although he no longer was a loving chronicler, however, Marchant continued to go to court day after day, fitting this in among

98. On court personnel and William Davy as a prototypical Old Bailey barrister, see May, *The Bar and the Old Bailey, 1750–1850*, ch. 1.

the regular visits he made to New Lloyd's Coffeehouse and the New England Coffeehouse (where he kept abreast of news from home), as well as his frequent visits to Lincoln's Inn and Doctors' Commons to see various acquaintances, both for meals and official consultations.

Perhaps the most unusual visit to a London courtroom paid by Marchant occurred on June 3, shortly after he had breakfasted with the famous actor Garrick, with whom he was now friends. No longer a spectator, Marchant appeared as a witness himself in a case at the Guildhall, tried at the sheriff's court. The cause was between John Manly of Newport, Rhode Island, and an Abraham Hart of London. Marchant provided few details about the meat of the case, not even what was at issue between the two men—property, a debt, some broken contract. Marchant took the stand as an expert witness, not on the law, but to provide information about people and practices in Rhode Island. He was asked to give evidence about the handwriting of Manly, about the seal of the colony, and about the handwriting of the Governor and his secretary. Clearly, a man of such standing in Rhode Island as Marchant—the attorney general—was thought to be an outstanding witness in the cause. Sadly, Marchant does not say what happened during the trial, how long he was questioned, or even what the case's outcome was.⁹⁹ As with so many cases Marchant reported in his journal, details like these were sometimes omitted.

The Gaspee Affair and Leaving England

Despite keeping up a voluminous correspondence with his wife and friends back in New England, Marchant did not write to them directly about what he observed in British courtrooms. His close and lifelong association with Ezra Stiles was punctuated by numerous letters describing what he saw and heard while in London, but he wrote nothing to Stiles about events in *Somerset v. Stewart* or other causes.¹⁰⁰ Indeed, Marchant knew from his arrival in England that his letters could never contain everything he

99. James Oldham has suggested that the case may have turned exclusively on the issue of handwriting, and therefore Marchant's answers may have ended the case somewhat precipitously (conversation with the authors at the 2003 British Legal History Conference, Dublin, Ireland).

100. See Dexter, ed., *Literary Diary of Ezra Stiles*, I: 13, 22, 110, 123, 179, 220, 223, 238, 251, describing their many contacts and letters before 1772. Upon Marchant's return, Stiles read the six volumes of his diary in their entirety (*ibid.*, I: 304–22). Despite the differences in their professions, Stiles and Marchant consulted each other on all topics; Stiles drew up an elaborate three-month plan for Marchant's European travels, prior to his departure in 1771 (*ibid.*, I: 117).

experienced, and his obligations to write to many friends would mean that letters home were less full than he wished; he found it “utterly impossible to write down by journal or otherwise one hundredth part of what I see or hear, much less shall I be able to do it in letters to all.”¹⁰¹ As he indicated to William Greene, another Rhode Island friend, if he tried to write down everything he had seen or heard, “it would fill volumes.”¹⁰²

Desperate to stay and see everything that London could offer, Marchant knew that was not possible; his family’s well-being demanded that he return home. He could not finish all the law business he had undertaken for friends and clients back home. In one long letter to John Lowell he described the often-delayed course of affairs in a lawsuit of Lowell’s that Marchant had been unable to press forward despite being in London nearly a year. Marchant ended up leaving Lowell’s business, along with several other unresolved legal matters, in the hands of his solicitor, Lawrence Holker.¹⁰³

When Marchant thought he had done all he could to press for payment of the colonial claims for the Crown Point expedition, he prepared to return to America. Summer transatlantic voyages were deemed the least dangerous, and having exerted himself as far as possible on both public and private matters, Marchant arranged to depart in July 1772. Only a week before leaving, his spirits were at their highest. It seemed certain that his efforts on behalf of the Rhode Island Assembly had prevailed and their wartime expenditures would be repaid. However, shortly before he was to leave, news arrived in London that Rhode Islanders, protesting taxes and anti-smuggling activities, had burned the British warship *Gaspee* after it ran aground.¹⁰⁴ Politicians in London previously in favor of giving Rhode Island compensation, promptly changed course. Despite his best efforts, Marchant never succeeded in getting the funds paid that Rhode Island had expended. After nearly a year’s time spent arguing with officials, Marchant could not persuade Parliament or the Treasury to honor the colony’s claims. The *Gaspee* incident reminded those men too forcibly that the colony had not yet paid the stamp tax collectors for their lost property in earlier years. His efforts to gain reimbursement for Rhode Island’s claims independent of those made by the stamp tax collectors were doomed

101. Henry Marchant to Ezra Stiles, September 5, 1771 (Ezra Stiles Correspondence, Beinecke Rare Book and Manuscript Library, Yale University).

102. Henry Marchant to William Greene, February 25, 1772 (William Greene papers, Rhode Island Historical Society).

103. Henry Marchant to John Lowell, January 16, 1773 (f.32–34, Henry Marchant Letterbook 1772–1791, Rhode Island Historical Society).

104. Edmund S. Morgan and Helen M. Morgan, *The Stamp Act Crisis: Prologue to Revolution* (Chapel Hill: University of North Carolina Press, 1953).

to failure; the best that the Lords of the Treasury would do was to recommend that the stamp tax collectors submit documentation about goods specifically lost during the riots, not inflating their demands. Rhode Island's Crown Point expenditures would have to wait until the tax collectors finally received their due.¹⁰⁵ The *Gaspee* affair marked the end to any hopes Marchant had for urging repayment of the colony's debt. Marchant finally departed for America eleven months after his arrival, and was back in Newport, Rhode Island by the end of September 1772, where he was received by a grateful (if no richer) Rhode Island Assembly.

While overseas, Marchant had fretted about both his family and his stagnant law practice in Rhode Island. Back in February 1772, he speculated that being away nearly a year could only mean the loss of many clients before his return to Rhode Island: "it must be a long time before I shall be able to reinstate myself in half the business I left." Ironically, Marchant discovered in the autumn after his return to New England that there were more cases needing his attention than he could handle.¹⁰⁶ Marchant spent the next several months writing to clients and friends about their legal affairs, and what sorts of resolutions he had been able to reach on their behalf in England, all the while wrapped in his own family grief at the loss of his only son; the infant had died during his year-long absence.¹⁰⁷ Swamped with family and business concerns, and soon embroiled in the *Gaspee* affair and other matters of provincial government, he wrote a dear friend a few months later, despairing "That I have been in Britain seems a Dream—But I have not Time to dream further."¹⁰⁸

Returned to the bosom of his family, daily drawn more deeply into the colonial affairs that would lead eventually to war and independence,

105. Letter from Governor Joseph Wanton to Earl of Dartmouth, February 16, 1773, recording the decision of June 11, 1772, transcribed in *Records of the Colony of Rhode Island and Providence Plantations*, 10 vols., ed. John R. Bartlett (Providence, RI: A. C. Greene and Brothers, 1856–1865), 7:222.

106. Henry Marchant to Ezra Stiles, February 26, 1772 (Ezra Stiles Correspondence, Beinecke Rare Book and Manuscript Library, Yale University). It is impossible to determine whether the increase in his legal business was because of his increased political stature or local circumstances (Henry Marchant to Lawrence Holker, November 4, 1772, f.18–20, Henry Marchant Letterbook, 1772–1791, Rhode Island Historical Society.)

107. See, for example, Henry Marchant to Jonathan Warner, February 1, 1773 (f. 47–48, Henry Marchant Letterbook 1772–1791, Rhode Island Historical Society). On the nature of this personal grief, see Henry Marchant to David Jennings, undated (c. September 1772) (Marchant Journal 1772–1773, Newport Historical Society).

108. Henry Marchant to Francis Dana, March 31, 1773 (f.61, Henry Marchant Letterbook 1772–1791, Rhode Island Historical Society).

Marchant had little time to think about his time in London or the cases he saw argued there. He may have been too busy to reflect upon them. As he wrote to a friend in London the following year, “Business I find has not left me, but rather crowds upon me.”¹⁰⁹ Lack of leisure time, and the political events that came to dominate his attention, prevented Marchant from continuing his correspondence with many acquaintances made in London, or from maintaining his own great schemes for intellectual improvement—he was forced to abandon a commonplace book that he began in 1773, after reading only a few books.¹¹⁰

His time in London, however, continued to shape his desires and expectations about the future. Until 1775, Marchant sent to England for the items needed in his profession: law books and manuals, even the wigs he intended to wear in court.¹¹¹ The personal library that he began to amass while in London only continued to grow; Marchant saved it from the depredations of the British army during their occupation of Newport by taking the expedient of moving it and his family to South Kingston, Narragansett for the duration of the Revolution.¹¹² The Marchant home in Newport was “laid waste” during the war, for British soldiers “tore most to pieces” and another house that Marchant had owned in town was “pulled down to the ground.” Despite this, Marchant’s love for the Englishmen he met prior to the war continued unabated, and as soon as the war was over, he resumed his correspondence with many of them, although the subject of the *Somerset v. Stewart* decision never arose again.¹¹³

As the meaning of Mansfield’s disputed words in *Somerset v. Stewart* was reinterpreted over time in English law and popular discourse, the decision also took on a life of its own in America, both on the eve of and after the Revolution. By the nineteenth century, *Somerset v. Stewart* had been transformed by American abolitionists and many jurists into something neither Mansfield nor Henry Marchant would have recognized

109. Henry Marchant to David Jennings, undated [c. September 1772] (Marchant Journal 1772–1773, Newport Historical Society).

110. Henry Marchant Commonplace Book, 1773, Rhode Island Historical Society. His rather elaborate plans can be found in the first six or seven pages of the volume, where he laid out his scheme for arranging material and indexing the same.

111. Henry Marchant to Alexander Grant, February 12, 1774 (f.52–60, Marchant Friendly Correspondence Letterbook 1773–1785, Rhode Island Historical Society).

112. Sibley, *Biographical Sketches*, 14: 460; Brayton, “The Library of an Eighteenth-century Gentleman in Rhode Island,” 277–83.

113. Henry Marchant to David Jennings, August 3, 1785 (Friendly Correspondence Book, Jantz Early Ms. No. 49, Harold Jantz collection of early manuscripts, Duke University Special Collections).

in 1772: the definitive legal rationale for the total abolition of chattel slavery.¹¹⁴ When Marchant sailed for home on July 23, 1772, he brought back impressions from the capital of the world and, more specifically, the legal and cultural milieu against which he and other colonials would soon rebel.

Although *Somerset v. Stewart* did not resurface during Marchant's later legal career, one of its combatants became a continuing source of inspiration for him: John Dunning, the barrister who argued on behalf of slave owner Charles Stewart. While in London, Marchant learned that Dunning had given a great performance in *Rex v. Stapylton* to free Thomas Lewis only the year before *Somerset v. Stewart* came to trial. Seeing Dunning appear on behalf of a slave owner in *Somerset v. Stewart* may have seemed, to others, that Dunning had an apparent change of heart, although Marchant could not have doubted Dunning's personal views after hearing him offer "a delicate apology for his appearing agt. [sic] the Side of Liberty." Unlike others in Mansfield's courtroom, however, Marchant would not have condemned Dunning. Following his return to Rhode Island, Marchant himself would take on legal work in 1773 for a known British government supporter, placing him at odds with other Sons of Liberty, and like Dunning, feel himself compelled to justify his actions to onlookers. As Marchant put it, "My warmly engaging against Mr. Shaw has given umbrage to many, who had a sincere regard for me." But Marchant declared "I never carried my political principles with me into court, in the height of our own internal Parties, so as to refuse my assistance to a man of opposite principles, or thereby to debar myself of getting a support for my family." He cited John Adams's defense of the British soldiers in the Boston Massacre case, only three years earlier, as support for his position, and then continued by citing the actions of "the great Mr. Dunning." That man, well known for "his laudable struggles, in the cause of liberty, was concerned against the Negroe Somerset, in that great Liberty Cause, as it was called in England." Marchant recalled, "No man from thence, drew a conclusion, that Mr. Dunning's private principles were unfavourable to liberty." For Marchant, a lawyer could be engaged by anyone, for any cause, so long as the client's cause had merit and there was money to be earned in the process.¹¹⁵ For Marchant,

114. See, for example, citations to *Somerset* contained in *Commonwealth v. Aves*, 35 Mass. 193 (1836) at 211 (Chief Justice Lemuel Shaw quoting Lofft report: "it is so odious, that nothing can be suffered to support it but positive law."); *Dred Scott v. Sandford*, 60 U.S. 393 at 535 (Justice McLean's dissent quoting same sentence in Lofft report); *Lemmon v. People*, 20 N.Y. 562 (1860) at 568, which quotes Hargrave pamphlet.

115. Henry Marchant to Samuel Ward, Esq. ("Honored Sir"), June 20, 1773 (Friendly Correspondence Book, Jantz Early Ms. No. 49, Harold Jantz collection of early manuscripts,

the actions of English lawyers continued to be those that he found the most memorable from his experience as a legal tourist.

For other observers, however, *Somerset v. Stewart* grew in importance not because of John Dunning's actions, but as a result of Mansfield's disputed words, becoming one of the most important of Marchant's lifetime. Its implications would resonate for decades not only in the realm Marchant visited but also in the republic that he later helped create. After serving several terms in the Continental Congress, Marchant eventually accepted a seat on the federal district court in 1790, remaining there until his death in 1796.¹¹⁶ Although Marchant did not play an active role in the elimination of Rhode Island slavery, *Somerset v. Stewart* encouraged others—mostly Quakers—to press for the end to enslavement there, and gradual emancipation began reducing the number of Rhode Island slaves in 1784.¹¹⁷

But more important than witnessing a single case was the variety of cases Marchant saw and courtrooms he visited during his year in London, the legal professionals he encountered, and the rituals he saw on display in places like Westminster Hall. Although Marchant did not secure the funds he was sent to London to collect from the British government, his optimistic outlook never slackened, because his journey was

Duke University Special Collections). Note that Ward was a kinsman through Marchant's stepmother.

116. Sibley, *Biographical Sketches*, 14: 463. The impact of *Somerset* upon any of Marchant's federal opinions must be considered tenuous at best. Early federal court opinions, typically brief, are unsigned in printed versions. The Original Case Records and the Final Record Book for the District of Rhode Island from 1790 to 1796 give no indication of the presiding judge for cases decided (whether they were published or not). Moreover, there were no cases relating to slavery in the Rhode Island Federal District Court for 1790 to 1796, the period of Marchant's tenure on the bench. Our thanks to the staff at the National Archives, Northeast Branch (Waltham, MA), which houses the Rhode Island district court records for this period, for providing this information.

117. Zilversmit, *The First Emancipation*, 120. Quakers dominated the abolitionist efforts in Rhode Island, which proceeded primarily through the legislature. Efforts to libel slave ships in federal court and have them condemned for sale in the 1780s and 1790s had little success; either ship owners were not convicted by sympathetic juries, or the ships condemned were bought back through rigged sales that allowed the original owners to repossess them for trifling sums, see Coughtry, *Notorious Triangle*, 217–21. Marchant's ability to influence abolitionism while he served on the federal bench in the 1790s was limited: "To many [Rhode Island] abolitionists, the courts were a poor but necessary last resort." Coughtry, *Notorious Triangle*, 208. The most significant drop in slave numbers occurred in the immediate aftermath of the Revolution, prior to Marchant accepting a place on the federal bench. Slaves in Rhode Island declined in number from over 4,300 in 1775 to only 958 in 1790. See James O. Horton and Lois E. Horton, *In Hope of Liberty: Culture, Community, and Protest among Northern Free Blacks, 1700–1860* (New York: Oxford University Press, 1997), 81.

about more than petitioning officials. Certainly, when all hope of compensation for Crown Point seemed gone, after the violence of the *Gaspee* affair became public knowledge in July 1772, the tone of Marchant's journal did not change. If his primary concern had been the colony's recompense, surely he would have been downcast; instead, the meals and meetings, visits to courtrooms and theater did not relent. Marchant's visit to the "Mistress of the World" afforded him a far from ordinary glimpse into the everyday workings of the courts in London, and the people who worked within them, and for Marchant, this made his legal adventures in London perfectly worthwhile.