Seditious Libel in Colonial America

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IF VOLUME OF WRITING were the criterion, the subject of seditious libel in colonial America would perhaps by now be exhausted for the scholar by virtue of the vast attention given to the trial of printer John Peter Zenger of New York. Zenger's is one of the most celebrated criminal cases of the colonial period. It has been worked and worried, and its principal figure lionized and idealized, by scores of legal, journalistic, and general historians.[1] Unquestionably, a landmark was established in the colonists' burgeoning drive for freedom when in 1735 the German immigrant was tried for libeling Governor William Cosby, and was freed. The decision flouted British law that had thwarted free expression and that had seemed well established: in seditious libel cases, the truth of the libelous words only aggravated the offense ("the greater the truth, the greater the libel"); and the jury's only function was to find the fact of printing, while the judge was to decide the law—whether the words were libelous.[2]

But this legal instrument of colonial governments bent on controlling expression has been closely associated with the Zenger trial itself and has not been isolated and examined in its breadth and detail.[3] And that, indeed, has been the case with most of the legal instruments for control of freedom of

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[1] An incomplete bibliography, of about 50 books and articles treating the case, is in VINCENT BURANELLI, *The Trial of Peter Zenger*. Pp. iv, 147. New York (1957). Standard treatments include LIVINGSTON RUTHERFURD, *John Peter Zenger*. New York (1904); IRVING G. CHESLAW, *John Peter Zenger: A Historical Study* (pamphlet, 1952); RALPH L. CROSSMAN, "The Legal and Journalistic Significance of the Trial of John Peter Zenger," 10 *Rocky Mountain Law Rev.* 258-268 (1938).

[2] FREDRICK S. SIEBERT, *Freedom of the Press in England 1476-1776*, pp. 273-275. Urbana, Ill. (1952).

[3] *Ibid.*, pp. 380-392, treats the subject in the English setting; the work is structured throughout according to instruments of control.

expression in colonial America. There is a chronological account in which one meets the various controls in order of their use for a single colony;[4] there is a broad, loose chronology that sweeps together a variety of infringements on press freedom in all the colonies;[5] and there are examinations of cases of contempt of legislature in several colonies.[6] Generally, however, much digging in official and nonofficial records is still to be performed. There is little doubt that cases remain to be unearthed before seditious libel and other instruments of press control can be seen in their proper perspective.

Meanwhile, this study is offered to suggest in part the place of seditious libel as one of a group of controls over the press; to isolate the libel cases in the hope of finding regularities; and to make suggestions as to further study of the subject. The sources are largely secondary; the method is primarily rearrangement of data.

First, the range of colonial government controls over the press:

Licensing of the press and pre-publication censorship in England died in 1695 with the expiration of the last Printing Act and Parliament's refusal to renew.[7] But these controls were perpetuated in the American colonies, where Parliament's place in affairs of state was weak and where governors ruled as agents of the King, not of Parliament. Instructions and commissions from the King directed the governors to license and censor.[8]

As is well-known, early colonial newspaper publishers printed "By Authority," or by license from governors. But quite soon in the history of the newspaper, this restriction

[4] CLYDE A. DUNIWAY, *The Development of Freedom of the Press in Massachusetts*. New York (1906).

[5] LIVINGSTON R. SCHUYLER, *The Liberty of the Press in the American Colonies*. New York (1905).

[6] MARY P. CLARKE, *Parliamentary Privilege in the American Colonies*. New Haven (1943); ARTHUR P. SCOTT, *Criminal Law in Colonial Virginia*. Chicago (1930).

[7] SIEBERT, *op. cit.*, note 2 at pp. 260-263.

[8] The instruction was standardized. For the wording, see *Documents Relative to the Colonial History of the State of New York*, v. 3, p. 375. Before Massachusetts lost its charter in 1686, it had its own licensing acts: DUNIWAY, *op. cit.*, note 4 at pp. 41, 63-65.

was lost to governors. It was a last attempt to assert the power of licensing and censorship (by the Massachusetts governor and the upper house of the legislative body—the Council), that caused James Franklin of the New England *Courant* his first hardships in 1722.[9] Yet neither that year nor the next, when the authorities again disciplined Franklin, did they accomplish his licensing. It was rather through other powers that lay with authorities, and that will be discussed below, that Franklin was forced to turn the paper over to brother Ben in 1723.

The fact of the matter was that licensing and pre-publication censorship were no longer part of the law in England and the king's instructions to governors could have little force in the colonies for long. If a governor complained to his superiors at home that he could not maintain licensing he could get no help from Westminster. For the home government did not have this power over the press of the homeland. By 1730, the colonial governors' instructions no longer carried the injunction to license and censor the press.[10]

A second avenue of control over the press that the colonial authorities might have attempted was taxing. This method was not used in the colonies as it was in the mother country where it was partially effective for short periods at least. Two colonies—Massachusetts and New York—taxed newspapers during the 1750's, but with small success.[12] Furthermore, their taxing seems not to have been a policy for controlling or restricting the press, but like the hated Stamp Act imposed on the colonies by Parliament in 1765 for a short time, was rather clearly meant to raise revenues.

Another little-used restrictive instrument in the colonies was action for treason. It was a difficult charge to prove, and even in the English homeland it was of small consequence as a press control.[13] Perhaps the most famous colonial trial for treason involving written words occurred in New York in 1702, when Col. Nicholas Bayard and John Hutchins were

[9] *Ibid.*, pp. 98-99, 163-164.

[10] DUNIWAY, *op. cit.*, note 4 at p. 69.

[11] SIEBERT, *op. cit.*, note 2 at pp. 312-313, 319-320.

[12] DUNIWAY, *op. cit.*, note 4, at pp. 119-122.

[13] SIEBERT, *op. cit.*, note 2 at p. 269.

convicted of a charge based on materials in three petitions to the King and Parliament. Their conviction was later declared null and void and all records of the judicial proceedings were ordered destroyed.[14]

During the 17th century, religious deviation in New England was of course frequently punished, often under the charge of blasphemy or heresy. While colonies displayed certain theocratic characteristics, such restriction on expression was to be expected; but as the lines between secular and clerical authority clarified in the 18th century, these charges apparently became less and less frequent.[15]

If licensing and actions for heresy gradually diminished as press controls in the colonies, another restrictive instrument seems to have been strong throughout the colonial period. This was the power of legislative and judicial agencies to punish for breach of privilege, or contempt. Printers were forever being called before the bars of the legislative bodies to answer for "affronts," "breach of privilege," "impudence," "indignities" upon authority, and "libels."[16] Broad judicial functions lay with the colonial assemblies, in a day before separation of powers in democratic government had been worked out;[17] and the very presence and acceptance of such powers no doubt strengthened the hand of legislatures bent on upholding their dignity, honor, and authority in the face of sniping by the colonial press. Close study of this restric-

[14] JULIUS GOEBEL, JR., and T. RAYMOND NAUGHTON, *Law Enforcement in Colonial New York*, pp. 84-85. New York (1944); SCHUYLER, *op. cit.*, note 5 at pp. 48-50; MARY P. CLARKE, *Parliamentary Privilege in the American Colonies*, pp. 50, 51. New Haven (1943). Participants in disorders such as Leisler's Rebellion (New York) of 1689-1691, of course, also were charged with treason; but the charge was not based on writings: JEROME REICH, *Leisler's Rebellion: A Study of Democracy in New York*. Chicago (1953).

[15] GOEBEL and NAUGHTON, *op. cit.*, note 14 at p. 153, describes an action for blasphemous libel as late as 1752, in New York. For seventeenth century actions in Puritan Massachusetts, see DUNIWAY, *op. cit.*, note 4 at pp. 29-40.

[16] CLARKE, *op. cit.*, note 14 at pp. 117-121, 205-208, 240-136; DUNIWAY, *op. cit.*, note 4 at pp. 93-94; SCHUYLER, *op. cit.*, note 5 at pp. 57-60; SCOTT, *op. cit.*, note 6 at pp. 164-174.

[17] CLARKE, *op. cit.*, note 14 at Chap. I.

tive power may show it to have been the most efficacious of all colonial press controls.

The above controls, along with actions for seditious libel, seem to have been the main avenues of coercive procedure open to authorities who sought to hold the press within the framework of behavior they had known. Until these controls (and indeed, the less obvious ones such as subsidy through contracts for official printing) are studied thoroughly, the place of seditious libel among them must remain somewhat uncertain.

To turn, then, to the more specific subject at hand, what follows is offered as a preliminary study of seditious libel itself. And as a result of this study, the writer offers the following hypothesis for further testing: *Court trials for seditious libel ended as a serious threat to printers in the American colonies with the decision in the Zenger case in 1735.* While the writer has found little to refute this hypothesis, much work remains to be done in the official records of the colonies, in newspapers, pamphlets and documents, in letters and private papers.

Sedition was defined as speaking or writing anything derogatory of the King's person or title, or calculated to stir up loyal subjects against the government; and seditious libel, "the intentional publication, without lawful excuse or justification, of written blame of any public man, or of the law, or of any institution established by law."[18] Would it have been wise, under these concepts, to suggest that Governor William Cosby spent too much time on the golf course, or that the Rev. Increase Mather wore obnoxiously loud sport shirts during his hours outside the pulpit?

In any case, there was small point in trying to escape the consequences of such statements in court by offering to prove their truth; or by asking that the jury decide whether the statements were libelous. The law was very plain against showing truth, and almost as plain against the jury's deciding any more than who did the actual printing.[19]

It is clear that spoken sedition was charged and found often during the 17th century.[20] It is clear also that sedition and contempt were at times intermixed and not plainly distinguished, and that "remarks were often called seditious, mutinous, scandalous, or contemptuous indifferently.[21] If someone declared that the assembly had been careless of the problem of defense against Indians, for example, was it contempt of the assembly or was it sedition? The answer might come in the form in which the legislative body chose to handle it: often an assembly requested some official or other agency in the government to bring an offender into a court of justice,[22] and the New York Council did this in the Zenger case; or the legislative body might choose to handle it under its own power to punish for contempt—as the Massachusetts Council did with James Franklin in 1722 and 1723.

Here we are concerned with actions identifiable as seditious libel trials in courts of justice—the kind of action that Zenger faced in New York in 1735. The writer has found four such cases in colonial America prior to the Zenger trial.

The first is the case of William Bradford and the Philadelphia Friends in 1692. Bradford was brought to trial for publishing a "Malicious and Seditious paper . . . tending to the disturbance of the Peace and the Subversion of the Present Government. . . ."[23] His offense was in a pamphlet, *An Appeal from the Twenty-Eight Judges to the Spirit of Truth.* Bradford argued the right of the jury to find the law in the case, and despite Justice Jennings' first refusal of the point, his instructions to the jury were plain: the jury was to find whether the pamphlet had a tendency to "weakening the hands of the magistrates," and "to the disturbance of the peace."[24] The jury could not agree, and Bradford was released from jail.

The second case is that of the Salem Quaker, Thomas

[18] ZECHARIAH CHAFEE, JR., *Free Speech in the United States*, pp. 19, 500. Cambridge (1941).

[19] SIEBERT, *op. cit.*, note 2 at pp. 273-275.

[20] SCOTT, *op. cit.*, note 6 at pp. 164-171.

[21] *Ibid.*

[22] CLARKE, *op. cit.*, note 14 at p. 47.

[23] SCHUYLER, *op. cit.*, note 5 at pp. 26-27; ISAIAH THOMAS, *The History of Printing in America with a biography of printers and an account of Newspapers*, v. I, p. 220, Albany (1874).

[24] This permitting the jury to find the law as well as the fact represents an early colonial deviation from the rule in the mother country, where it was not allowed: SIEBERT, *op. cit.*, note 2 at p. 273.

Maule,[25] in 1695-96. The first criminal trial in Massachusetts for a printed libel rested on Maule's pamphlet, *Truth held forth, and Maintained,* which was said to have "many Notorious, and Wicked Lies, and Slanders" on government.[26] Maule went free by playing on the jury's reaction against the credulity that had attended the recent witchcraft hysteria. It appears that the jury found the law in this case, as well as the fact.

(3) Case number three took place in New York, in 1714. Here Samuel Mulford, member of the assembly, was informed against by the attorney general for printing and publishing a libel against Governor Hunter. The words were first uttered in a speech before the Assembly.[27] When the case came up, Mulford argued that because the speech was delivered in the assembly, the courts had no jurisdiction. The Supreme Court upheld his demurrer.

(4) The fourth and last pre-Zenger case compiled by the writer was that of John Checkley, stout Episcopalian and perennial offender of clerical and lay authority in Puritan Massachusetts. In 1724, he advocated in writing "A Short and Easy Method with the Deists," but the religious color of his pamphlet's title did not prevent his flavoring the work with secular comment. And the latter, the colonial council charged, included "sundry vile insinuations against His Majesty's rightful and lawful authority."[28] The appeal jury said that if the court found the work to be a libel, Checkley was guilty—that is, the jury refrained from finding the law in the case. The defense attorney argued that the jury should have found the law, and because it did not, Checkley should go free. But the court rejected the argument, called the work a libel, and upheld the conviction.

These four pre-Zenger cases display some interesting characteristics. None involved a newspaper, although since 1719 more and more of the little two- or four-page gazettes

[25] LAWRENCE W. MURPHY, "Thomas Maule: the Neglected Quaker," *Journalism Quarterly,* XXIX, p. 171 (spring 1952).

[26] DUNIWAY, *op. cit.,* note 4 at pp. 70-73.

[27] GOEBEL and NAUGHTON, *op. cit.,* note 14 at p. 313.

[28] EDMUND F. SLAFTER, *John Checkley,* vol. I, p. 56. Boston (1897); *Ibid.,* II, pp. 1-50; DUNIWAY, *op. cit.,* note 4 at pp. 107-111.

had sprung up in Boston, New York, and Philadelphia. In each, legislative or executive agencies were involved in bringing charges. In at least two (Bradford and Maule), the jury was permitted to find the law as well as the fact. There is no indication that truth was pleaded or accepted as a defense in any of the trials. Three reached the jury; one was decided by judges, apparently in pre-trial proceedings.

Finally, it should be added that there probably were other colonial trials for seditious libel before 1735. Andrew Hamilton said in his defense of Zenger that he knew of one, involving Governor Nicholson (apparently while Nicholson was in Virginia, between his terms in Maryland and South Carolina) and a clergyman who wrote a letter.[29] Nicholson's prosecution of the cleric, said Hamilton, was stopped by order of Queen Anne.

The above cases bring us to the Zenger trial, which does not need to be reviewed here. It should be mentioned that the principles of the jury's finding the law as well as the fact, and of truth as a defense, had been denied flatly in an English case of 1731—the trial of Richard Francklin—just four years before the Zenger case.[30] Both principles, of course, were successfully argued in the Zenger trial by Andrew Hamilton, the aged Philadelphia lawyer who with his plea brought the New York jury to defy the judge and tradition.

The first noteworthy aspect of the Zenger trial, beyond its great significance in the history of press freedom, is this: the Zenger prosecution was just as unsuccessful as nearly all of its predecessors in getting a conviction. In only one previous case discovered by the writer was the seditious libel trial effective as a convicting instrument in the hands of colonial authorities.[31]

This is not to say, of course, that the possibility of a seditious libel trial was not a threat to colonial printers. Printers were not, in all likelihood, aware of the weight of

[29] RUTHERFURD, *op cit.,* note 1 at p. 115. In the trial of Col. Nicholas Bayard of New York for treason in 1702, seditious libel was brought up, but the legal charge apparently was solely treason: *Howell's State Trials,* XIV, pp. 471, 495.

[30] *Howell's State Trials,* XVII, p. 626.

[31] The Checkley case, *supra,* p. 166.

colonial precedent in the matter. Furthermore, even though a trial was likely to be unsuccessful from the standpoint of convicting a printer, its unpleasant aspects were no doubt sufficient to prevent printers from risking trial. But on the basis of the above evidence, it would appear that the seditious libel threat was not nearly as great for colonial printers as it was for printers in the homeland. In late 17th century England, seditious libel "was the most useful single weapon available to the government in its conflict with recalcitrant printers and publishers," [32] and its efficacy there continued through the first quarter or third of the 18th century.

Now as to the post-Zenger instances in which seditious libel charges were aired, as compiled by this writer:

(1) Thomas Fleet, Boston *Evening-Post*, 1742.

During the War of Austrian Succession, Fleet printed a naval officer's statement that the British Parliament had called for all the papers relating to the war, and "twas expected that the Right Honorable Sir Robert Walpole would be taken into custody in a very few days." [33] The Massachusetts Council ordered an information brought against him for the "scandalous and libelous reflection" on the King's administration. But the prosecution, to all appearances, was dropped.[34] Fleet reported in the next issue of his paper that the naval officer had denied saying the words, but that he (Fleet) had obtained affidavits from five men as to the truth of the officer's making the statement.[35] It would seem that colonial authorities were not anxious to press a case where the printer could make out some show of truth.[36]

(2) William Parks, Williamsburg *Gazette* (date uncertain; sometime in the 1740's).

Here the only source found was the historian Isaiah Thomas.[37] Parks reported that years earlier, a member of

[32] SIEBERT, *op. cit.*, note 2 at pp. 275, 380-382.

[33] Boston *Evening-Post*, March 8, 1742, p. 1.

[34] DUNIWAY, *op. cit.*, note 4 at pp. 112-114.

[35] Boston *Evening-Post*, March 15, 1742, pp. 1-2.

[36] THOMAS, *op. cit.*, note 22 at v. 2, p. 253.

[37] *Ibid.*, I, pp. 333-334. SCHUYLER, *op. cit.*, note 5 at p. 69, apparently used Thomas' account in reporting the case. Thomas took his account "from the newspapers printed more than forty years ago," and the source thus may be available to students today.

the Virginia House of Burgesses had been tried and sentenced for sheep-stealing. The House of Burgesses supported a libel action against Parks, but, according to Thomas, Parks called for and got the court records on the case, and his showing of truth was enough to free him. Whether a court trial occurred is not clear from Thomas' account.

(3) Provost William Smith of the College of Philadelphia, and magistrate William Moore, publisher and author of "The Humble Address of William Moore," Philadelphia, 1756-1759.

This famous and complex case, little attended to by historians but of real importance in the history of colonial press freedom, involved contempt of assembly and charges of libel. Writings for which the two were held responsible included criticisms of the assembly.[38] Smith was charged with libel, was tried by the assembly itself on that charge (along with breach of privilege),[39] and was imprisoned at various times during the four-year period. There was no libel action by a court of justice, but rather by the legislative body—a procedure foreign to our separation-of-powers concepts today, but at that time within the framework of the system of justice.[40]

(4) Alexander McDougall, author of "Address to the Betrayed Inhabitants of New York," New York, 1770-1771.

McDougall criticized the New York Assembly for voting moneys to support the King's troops, and was brought to court on a libel charge by way of grand jury indictment.[41] While out on bail, he was haled before the assembly, which used an

[38] A good account is in CLARKE, *op. cit.*, note 14 at pp. 220-222, 246. See also HORACE W. SMITH, *The Life and Correspondence of the Rev. William Smith*, vol. I, pp. 167-209. Philadelphia (1880).

[39] *Pennsylvania Colonial Records*, vol. VIII, p. 438-447. Harrisburg (1852).

[40] CLARKE, *op. cit.*, note 14 at pp. 245-246. The broad judicial powers of the legislative bodies of the time have already been noted: *supra*, p. .

[41] *Documents Relative to the Colonial History of the State of New York*, vol. VIII, p. 213. The indictment seems unusual for a date so close to the Revolution, for colonial grand jurists were not inclined to punish printers as tensions with authority increased: See Gov. Cadwallader Colden's letter to England in *Ibid.*, vol. VII, p. 759. A good account is in DOROTHY R. DILLON, *The New York Triumvirate*, Chapt. VI. New York (1949).

order charging libel to confront him, and there he protested that he was being placed in double jeopardy. His recalcitrance caused the assembly to jail him for breach of privilege (contempt). Repeated delays by the government in bringing him to trial on the libel charge, in spite of his attorney's requests for trial, indicate that the government was not confident of its case and perhaps unwilling to face an aroused public opinion. The court discharged the defendant without trial.[42]

(5) The writer has found notes as to a few other cases where libel was charged by authorities, but where indictments could not be got or were not attempted. Isaiah Thomas had two such experiences, as a printer in Nova Scotia in 1766,[43] and as publisher of the Massachusetts *Spy* in 1722.[44] Thomas himself speaks of the failure in 1766 of Virginia authorities to get libel indictments against William Rind, and against John Dixon and Alexander Purdie, the "printers of the two Virginia Gazettes." [45]

From an examination of these post-Zenger cases, a second noteworthy aspect of the Zenger trial itself appears: The Zenger trial of 1735 may have been the last colonial trial in a court of justice for seditious libel. Again the caveat against accepting the above list of cases as complete is entered. But with the possible exception of the Parks affair, which is uncertain, in no case discovered by this writer did a trial before judge or jury materialize after Hamilton won the landmark decision. This supports the original hypothesis advanced herein: *Court trials for seditious libel ended as a serious threat to printers in the American colonies with the decision in the Zenger case in 1735.*

It is tempting to leap to the obvious conclusion: that the Zenger trial, heavily publicized as it was,[46] convinced authorities that the jury trial for seditious libel was no longer a useful tool in the colonies; that such symbols as "Zenger," "Andrew Hamilton," "the truth as a defense," and "jury-found law," may have been recognized by authorities as potential weapons of power in the hands of defense attorneys. This of course goes too far; we can scarcely attribute such an "effect" to an event that occurred 200 years ago. We can, however, mark the relationship and say that the Zenger decision apparently was a principal cause for the demise of the jury trial in seditious libel.[47]

What is the evidence to refute the hypothesis? First, there is a possibility that a court trial was held in the Parks case. Second, there may well be cases reported in unexplored court records of the colonies. Third, the wording of the hypothesis—the court trial was not a "serious threat"—goes further than the evidence in that the very fact that a court action might be brought, successfully or unsuccessfully, was perhaps a frequent fear in the minds of printers. The first and second refutations may be studied further, and more may be established, perhaps. The third is likely to remain a matter of some speculation.

Several lines of future study become apparent from the foregoing. First, we need an examination of the whole problem of press freedom in the American colonies; one that approaches Siebert's work on press freedom in England in scope and social awareness. It may be most profitable to perform it within the framework of his propositions aimed at developing a theory of freedom of the press.

Siebert's Proposition II is: *"The area of freedom contracts and the enforcement of restraints increases as the stresses on the stability of the government and of the structure of society increase."* [48] The foregoing study of seditious

[42] *Ibid.*, pp. 120-121; THOMAS, *op. cit.*, v. II, note 23 at pp. 479-483. The case was also weakened by the death of a principal witness for the prosecution.

[43] SCHUYLER, *op. cit.*, note 5 at pp. 18-19.

[44] DUNIWAY, *op. cit.*, note 4 at p. 130.

[45] THOMAS, *op. cit.*, note 23 at v. I, p. 336.

[46] See RUTHERFURD, *op. cit.*, note 1 at pp. 249-255, for a bibliography of pamphlet accounts of the trial. It appeared in some colonial newspapers—in South Carolina, Pennsylvania, and Massachusetts, at least—in addition.

[47] It should be noted here also that resistance to seditious libel trials was mounting steadily in the mother country during the second and third quarters of the century, and that the Zenger decision apparently had a good deal to do with the popular frame of mind in England: SIEBERT, *op. cit.*, note 2 at pp. 383-392. Nevertheless, many seditious libel cases came before the homeland courts; perhaps as many as 70 between 1760 and 1790: ZECHARIAH CHAFEE, JR., *Freedom of Speech*, pp. 22-24. New York (1920).

[48] SIEBERT, *op. cit.*, note 2 at p. 10.

libel in the colonies—incomplete as it is—does not seem to bear the proposition out. The restraint of seditious libel actions apparently decreased instead of increasing as the instability of the Revolution approached. But seditious libel was only one of the restraints available to colonial government; and study of all the restraints may show that seditious libel was a small factor, outweighed by increasing restraints of other kinds.

Second, and on a more modest scale, work needs to be done on the subject of seditious libel beyond that represented herein. Official records that remain unexplored must be examined carefully before the hypothesis to which this study is addressed can be established or refuted.

Third, a prominent feature of the post-Zenger seditious libel cases is that in all four which have been reported in some detail, the legislative branch was deeply involved in bringing the action. When this fact is related to the frequent contempt actions by legislative branches against printers, it suggests a new hypothesis for testing, to wit: *The chief legal threat to the colonial printer lay in actions by the legislative bodies.* It is true that the upper legislative bodies—the councils—were frequently dominated by the executive branch—the governors—and that many of their actions against printers may have been inspired by governors. But the number of actions by assemblies—the lower branch of the legislature, and the agency supposedly closest to the colonial movement for freedom—is large.

The above suggestions are only a few of the ways in which the problem may be studied. The first need is for extraction of all possible cases from colonial court records.