

St Helena Letters from England 1762-1816

Introduction: This is the tenth volume in the series *St Helena Letters from England*. Unlike earlier volumes in this series, these were almost entirely legal opinions and formal instructions from the Court of Directors of the East India Company to the Governor and Council of St Helena, concerning the administration of civil and criminal justice under the Company's royal charters. They responded to reports received from the island, applied English legal principles as the governing standard, and addressed such matters as the conduct of courts and juries, the rules of evidence, the legal status of slaves and free Blacks, the inheritance of land, and the duties of judicial officers. Although expressed in the form of advice, they conveyed decisions that were binding in nature and required the submission of records to London, so that the Company could maintain oversight of the island's legal system.

Source: Images of the original records can be viewed on the British Library's website: <https://eap.bl.uk/archive-file/EAP1364-1-3-10>.

Text Transcription: This text was produced entirely by AI transcription of handwritten document images on the British Library's website, at approximately thirty pages per hour.

Current AI systems cannot transcribe handwritten manuscripts with complete accuracy, particularly where documents are degraded or damaged, where poorly formed script or marginal notes merge into the main body of text, or where complex tables are present.

Four specific problems affected this transcription. First, AI is designed to prioritise meaning and readability, which creates a strong tendency to alter spellings, expand abbreviations, or adjust grammar rather than preserve original forms. It is particularly unreliable in recognising the correct spellings of unfamiliar surnames and place names. To mitigate this, for each image submitted, the AI was given a strict protocol requiring it to rely solely on clearly visible ink strokes and to mark any uncertain readings as [...], thereby reducing the risk of inferred or invented text. Second, AI struggled to transcribe handwriting in the style of the late secretary hand, commonly employed from the sixteenth to eighteenth centuries, in which the letter 'S' appears in a form resembling a trailing 'L'. Third, some of the handwriting in this volume is so faint or poorly formed as to be difficult to read even by eye. Fourth, many tabular sections were too complex to transcribe accurately, so these have been replaced by summary titles such as "Report: Invoice for Goods Received by Sea".

Given these limitations, this transcription should be regarded as unreliable and used only as a search-and-find shortcut. Once a relevant passage has been located, it must always be checked against the original images.

Modern Text Interpretation: Each section of text was submitted for AI analysis in order to explain the archaic language in clear, modern UK English. These are not direct sentence by sentence replacements, but explanatory interpretations intended to clarify meaning while preserving the substance of the original. Where a specific individual is named within a section of the original text, that person will generally also be identified within the explanatory interpretation. However, where the original consists largely of lists of names, these are not usually repeated in the explanatory text.

Each modern summary is followed by an AI-generated Interpretations section, which provides additional commentary on the material based on wider information located on the internet. The AI analysis also includes a 'Speculations' section, offering one or more possible reflections on the material. The value of these notes range from the profound to the trivial or self-evident - time did not permit deletion of the latter.

Text Loss: The abrupt changes in subject between pages and jumps in paragraph numbering indicate that several pages have been lost.

Referencing Text Locations: A dual numbering system has been adopted, combining the British Library film number with the manuscript's original page number. These are presented in the format: British Library Film No. / Document Page No.

Pagination: Pages are faintly numbered at the top left and right corners. The first visible number is marked as page 1 on Film No. 6. The page numbering then continues in sequence through to the end of the volume.

Dates: The letters in this volume are usually dated at their conclusion. The earliest correspondence is from 3 February 1762 and the latest is 20 January 1816.

These letters were from England during the administrations of Charles Hutchinson (1747-1764), John Skottowe (1764-1782), Daniel Corneille (1782-1787), Robert Brooke (1787-1801), Francis Robson (1801-1802), Robert Patton (1802-1807), William Lane (1807-1808), Alexander Beatson (1808-1813) and Mark Wilks (1813-1816).

AI Generated Summary

Introduction

The volume gathered the East India Company's legal dealings with St Helena between 1753 and 1816. It held letters from the directors in London to the Governor and Council, together with written opinions from the Company's solicitors and counsel. The papers were arranged by subject rather than date, so an opinion of 27 November 1753 followed a letter of 20 December 1792. Every item was written or filtered in London. The Council's letters survive only as the directors quoted them, and slaves appear only through disputes about them. [Film No. 6-47]

Governance and the Legal Foundation

A letter of 3 February 1762 affirmed that the Company, acting through its officers, held the right to govern St Helena and to hold courts for every crime and civil dispute. The Governor and Council were to sit as judges, as they always had, without any fresh grant of authority. Local laws could stand if they did not conflict with English law. The directors wanted them compiled into a code for review in London, and on 17 December 1762 they promised to examine the code the Council had sent. [Film No. 6, 8, 13]

The directors built a steady channel of scrutiny. In February 1762 they ordered legal papers to be sent home apart from other business, and a letter of 12 January 1763 applied the same rule to their own replies. That letter answered one of 2 October 1762 which had reached London aboard the *Calcutta*. A letter of 16 November 1763 reported that the Company's solicitor had found the records of the Council's three quarterly courts lawful and orderly. The rule still held in May 1797, when the Council sent a separate "law letter". Correspondence often crossed at sea, so the Council raised doubts about oaths on 1 May 1763 before an answer sent the previous December could arrive. [Film No. 12, 15, 16, 17, 38]

On 16 November 1763 the directors answered Governor Hutchinson's letter of 15 July about who should preside in court. They allowed a special arrangement while Hutchinson remained on the island. Every later Governor was to preside in person, with the Lieutenant Governor taking his place only in illness or other unavoidable absence. The concession to one man was not to become a precedent. [Film No. 16-17]

Standing counsel's opinion of 5 January 1781, answering the Council's letter of 31 May 1780, questioned the whole basis of island justice. A charter of Charles II had given the Company power to make laws for St Helena, even in capital matters. A similar grant over Bombay had been judged inadequate, and counsel suggested that the Company might seek a royal charter of justice. Any such charter would need to separate white islanders from slaves, since full English protection for slaves would dissolve the bond between master and slave. The warning followed the English judgement of 1772 that the common law gave no support to slavery in England. [Film No. 18]

Counsel J Adair took a more confident view on 13 January 1787. He held that the charter let the Company issue binding rules for the island, provided they followed English law as closely as circumstances allowed. The solicitor Henry Smith applied the same test in reverse on 20 February 1816. He condemned a clause of the proclamation of 10 April 1811 that let either party in a civil suit waive a jury and have the case settled

summarily in equity. Neither the Council nor the Company could make such a law, because jury trial was fundamental to English law and nothing on the island made it unworkable. [Film No. 24, 45, 47]

The Judiciary

The letter of 3 February 1762 required every trial to go before a jury of 12 island residents. Englishmen who happened to be on the island could make up any shortfall, and they were probably seamen from ships in the road. The directors had found the Council convicting without juries and ordered the practice stopped. Summary conviction was left to the Governor alone, and only where a statute allowed it. Criminal business was divided between the quarterly courts of the peace for lesser offences and oyer and terminer for treason, murder and felony. Model forms cast the Governor and Council as commissioners of oyer and terminer. [Film No. 6-7]

The directors admitted in February 1762 that they did not know how the island's civil courts worked. They asked for each step of a lawsuit and whether juries had ever sat in civil trials, and let the Council keep its custom meanwhile. A letter of 17 December 1762 saw no need to send out a trained lawyer but ruled that no civil or criminal case be decided without a jury. The same letter held that naming a town or place, rather than a parish, sufficed to describe a party. By 1763 the Council had resolved that juries would decide every case, and the directors approved in November. [Film No. 8, 13-14, 16]

With the letter of 3 February 1762, the directors sent the Statutes at Large, Hawkins' Pleas of the Crown and Burn's Justice. They could find no sheriff, constable or peace officer on the island and asked who did such work. On 17 December 1762 they ordered a sheriff, a clerk of the peace and at least one constable to be appointed and never left vacant. Fees were to be moderate and local, since stamp duties had inflated English charges. The constables' staves the Council requested were sent with the fleet in November 1763, so even the badges of office came from England. [Film No. 8, 13, 16]

A letter of 16 November 1763 approved the fees for the clerk of the peace and the gaoler fixed in the Council's minutes of 4 July. The directors ruled that the gaoler's first two charges could not lawfully fall on prisoners, so he had to be paid another way. English gaolers went on charging prisoners, even acquitted ones, until Parliament began to curb the practice in 1774. The clerk of the peace, Mr Doveton, petitioned in minutes of 14 June, probably in 1792, for a higher salary and a fee scale, expecting heavy new work. The directors accepted his merit on 20 December 1792 but would fix nothing until the Council described that work. [Film No. 16-17, 29-30]

A letter of 12 January 1763 ruled that no written statement or affidavit could serve as evidence in a criminal case. Magistrates were instead to bind prosecutors in £50 0s 0d or £100 0s 0d and witnesses in £20 0s 0d or £30 0s 0d to appear at the next gaol delivery. The directors knew of no lawful way to stop a bound witness sailing away, which left transient victims able to defeat a prosecution. In November 1763 they confirmed that a forfeited pledge could be enforced whenever the person returned. Pardon belonged to the Crown alone, so the Council could only postpone an execution and send the case home for a petition to the King. [Film No. 15-17]

The proclamation of 10 April 1811 barred arrest at the start of a civil suit unless the claim reached £15 0s 0d, or £10 0s 0d in other suits. Henry Smith approved these limits on 20 February 1816. He advised that no arrest should follow without a sworn affidavit of the debt. The English act requiring this did not reach St Helena, but the Governor and Council could adopt the rule as court procedure. [Film No. 45-46]

Military Affairs

A letter of 3 February 1762 accepted that the soldier Jaques Birch, named in the Council's letter of 4 December 1757, had been properly tried by court martial under George II's mutiny act. His sentence, apparently removal to his own country, amounted to no punishment and might tempt others to offend on purpose. The Council reported on 9 September 1761 that it had sent the soldier Stephen Willoughby to England on earlier orders, and the directors now ended the practice. On an island soldiers could not easily leave, removal had become a reward. [Film No. 9, 12]

A letter of 17 December 1762 ruled that the Mutiny Act and Articles of War reached St Helena. They bound every soldier and paid militiaman, but not unpaid militia, who remained civilians answerable to the ordinary courts. The Council could publish militia regulations with penalties short of death or loss of limb. [Film No. 14]

Crime and Punishment

The letter of 3 February 1762 tied sentences to English statute and forbade any harsher penalty. Transportation to the American plantations was impossible from St Helena. Felons entitled to benefit of clergy could therefore receive only flogging or branding in the hand, with death reserved for felonies outside clergy. On 10 March 1759 the Council had fined Richard Law £0 10s 0d for calling William More "a blackguard scoundrel". English law allowed neither fine nor prison for such words, and the fine went into Company funds. [Film No. 6-7]

The same letter reviewed cases reported in 1757 and 1758. William Boddington, a clerk, took six gold rings from the office of Mr Wrangham, the Company's secretary, and pawned them with Langbridge and Legg for money and liquor. The Council fined the pawnbrokers £1 0s 0d each, confiscated their money and liquor, and imprisoned Boddington. The directors held that Boddington was guilty only of breach of trust if the rings had been entrusted to him, and otherwise of theft triable by jury after committal. Langbridge and Legg could be punished only if proved to know the rings were stolen, and their high premium was evidence of that. The rings remained Wrangham's property throughout. [Film No. 9-10]

Evans and Cooksey, also reported in December 1757, should have faced a jury as swindlers unless charged under an act of 1757 against disposing of another's goods. That act carried a £1 0s 0d penalty or 14 days in the house of correction. The directors approved the Council's refusal to ship Cooksey away before trial but warned against long custody before trial. Evans escaped, as the Council reported on 19 August 1758, and the directors urged quicker arrests. Joakim Josee, named in the same letter, should have been tried as an ordinary felon. [Film No. 9, 11]

Mary Herbert's case, reported in a letter of 14 April 1760, was to go before a jury by formal indictment. The directors cited the act of 1624 that presumed an unmarried mother who concealed her child's death guilty of murder unless a witness proved the child stillborn. She was probably accused of infanticide. The black islander Cossam had been sentenced to be hanged, drawn and quartered with his body displayed. The directors' letter of 3 February 1762 ruled that penalty lawful only for treason. Murder carried hanging, and the Murder Act of 1752 allowed hanging in chains or dissection only if pronounced in the sentence. [Film No. 10-11]

Slavery

The Council's letter of 16 July 1758 reported killings among black islanders. On 3 February 1762 the directors ruled that these must be tried as murder, and every other crime by black islanders handled exactly as for anyone else. They rejected the Council's scheme, described on 18 December 1760, of punishing first offences differently from later ones. The ruling brought slaves under English trial procedure while leaving their status as property untouched. [Film No. 10]

The Council reported on 9 September 1761 a dangerous mood spreading among black islanders. The directors urged firm enforcement in reply. If the Council believed the informer Pompey, the plotters could be bound over for good behaviour on sworn information from Pompey and his master. The master could swear that he feared for his life. The directors admitted that the accused could hardly find sureties, so imprisonment would in effect be their punishment. The procedure allowed open-ended detention without conviction while keeping to the forms of English law. [Film No. 11-12]

A letter of 17 December 1762 settled how black islanders could testify. Those with no notion of any god could not be bound by an oath. Anyone who revered something sacred could be sworn by it. The ruling followed the English case of Omichund against Barker in 1744, which admitted Hindu witnesses sworn by their own faith. [Film No. 13]

The Council's letter of 31 May 1780 concerned a master, Worrah, accused of seriously injuring a slave. George Rous advised on 5 January 1781 against prosecution under the act of 1671 that made deliberate maiming a capital felony. He preferred a charge of assault, punishable by fine and prison. The surgeon's evidence, Worrah's confession and the testimony of Yon, a slave of Orlando Bagley, could convict without any slave speaking against his own master. Rous added that any witness sworn in his own faith was competent. The arrangement spared the master the gallows and avoided a precedent white islanders would have resisted. [Film No. 18-19]

Island custom still barred slaves from giving evidence against white people. A case prepared for the Company by 1786 admitted that owners had therefore escaped punishment for cruelty and perhaps murder. In a recent case a white man ordered his slave to help him steal a neighbour's sheep. The master was never prosecuted, while the slave was convicted on other slaves' evidence and sentenced to death. He was reprieved pending a petition to the King. The Governor's letter of 2 July 1785 reported the Council divided on the question. [Film No. 22-23]

Adair's opinion of 13 January 1787 held that non-Christian slaves were competent witnesses against white people and each other alike. They had only to understand the oath and believe in a supreme God. He cited the special oaths allowed to Scots and Jews and the ruling in Omichund against Barker. The contrary West Indian practice rested on local statutes that St Helena lacked, so the magistrates were already bound to hear such evidence. Witnesses without a recognised religion were to be sworn in the form most binding in their homeland. [Film No. 23-24]

The slave code of 24 February 1792 went out aboard the *Valentine*. On 20 December 1792 the directors expected it to settle most disputes and rebuked the Council for referring minor cases home. They sent an extra law on unmarried slave women who bore children. It was framed wholly around the owner's lost labour, expense and household disruption, with no mention of the mother or child. The code probably banned slave imports, and it freed slaves from Sunday work so they could receive religious teaching. [Film No. 25-29]

The 25th article of the old slave laws obliged a master who fathered a child by his slave to free her, and let others buy a mother's freedom. In December 1792 the directors held that it could not force a sale. Mrs Hodson could therefore refuse to sell Sukey, though she had turned Sukey out of the house. The directors saw no credible reason for the refusal and told the Council to force the sale by any lawful means. They extended the article to Peg, whose child was fathered by her master's son Charles Scott. He was to free her and support the child. The Council's freeing of a woman who bore a child to Craven, a soldier, was approved, and the Company could employ her while she earned her keep. [Film No. 26-27]

The same letter protected owners as well as slaves. Mr Benjamin Mason had bought Sultan before the import ban, so Sultan was returned with compensation for lost work. No slave was to be sold off the island or banished except by sentence for a crime, since sales abroad would open a foreign trade. The Council had rightly stopped Lieutenant Desfountain from selling a woman named Sukey. Owners had argued that slaves who did no Sunday work need not be fed. The directors rejected this, since hungry slaves would steal or work for food and lose the religious teaching the code provided. With imports and sales abroad both barred, the slave population could change only through births, deaths and freedom, in step with the Commons vote of 1792 for gradual abolition of the trade. [Film No. 27-29]

The Council reported by 1792 that island juries showed widespread prejudice against black islanders. On 20 December 1792 the directors ruled that neither jury nor court could alter a recorded verdict. The court could only postpone judgement and recommend the convicted person to England for mercy, which also exposed the jurors to censure. The remedy helped a black defendant wrongly convicted but could not touch an unjust acquittal of a white man. [Film No. 29]

Andrew, a free black man, had long worked a plot apparently promised to him for life in return for faithful service. In December 1792 the directors approved the Council's action over Mr Bagley's very cruel treatment of him and over Mr Lambe's refusal to pay him a debt. They judged it insufficient and ordered

the land restored. An informal promise to a free black man was treated as binding against white islanders. [Film No. 28]

Land and Inheritance

John Smith's opinion of about 1780, on the Council's letter of 25 October 1779, concerned Richard Goodwin's claim to the estate of Captain Richard Beale against Matthew Bazett. Bazett argued that all private land was personal property passing to executors. Smith rejected this. The Company's first commission of 19 December 1673 granted planters land to them and their heirs for ever in return for dues and services, so such grants were inheritable freehold. The Company also owned land bought back, forfeited or never granted, and leased parts for terms of years. Leases passed to executors, but Beale's papers did not show which kind he held, so the deeds had to be checked. [Film No. 20-21]

Smith identified Anthony Beale as heir if his father Onesiphorus was Richard's eldest brother. Anthony had to live on the land within two years or keep two inhabitants and two cows on every 20 acres. Otherwise the land was forfeit under the sealed regulations of 2 March 1680/1, which accounted for many estates returning to the Company. The condition kept land peopled and farmed for a garrisoned supply port. [Film No. 21-22]

A dispute recorded in 1753 turned on the will of Gabriel Harper, entered in the Council's minutes of 22 March 1748/9. His widow Bridget later married Mr Goodwin, who claimed a third of Harper's leasehold against the children. The Council's letter of 9 August 1753 held that leasehold was generally treated on the island as real property. Charles Yorke found no law or custom to support this on 27 November 1753 and advised following English law, which made leasehold personal property. The Company itself admitted that its records were silent on the point. [Film No. 32-35]

Bridget had formally chosen before the Governor and Council to take half the freehold and leasehold under the will. Island custom offered a widow half the freehold, more than the third allowed by English dower. The will ended her leasehold share on remarriage and returned it to the pool of personal property, of which she held an outright third. Through her, Goodwin gained a third of the leasehold. He had to repay any income drawn beyond that third since the marriage. [Film No. 35-37]

The Company's solicitor Henry Smith answered the Council's law letter of May 1797 on 3 May 1798. John Fabiano had left a house and a slave to Tellan for life, then to her son Billy and his heirs. Billy was illegitimate and died before his mother, without will or children, so his interest escheated to the Company. Smith doubted the English custom of rewarding the first informer suited so small an island. He suggested regranting to Billy's aunt Sarah Harvey or to William Julio, apparently the natural son of Julio Fabiano, according to need and with compensation to the other. Neither had a legal claim, so the escheat let the Company weigh family ties the law ignored. [Film No. 38-40]

Orlando Bagley's estate, raised in the Council's letter of 19 December in the 1790s, was the subject of an opinion by Henry Smith of about 1798. Debts fell first on personal property, and on land only for sealed debts the personal estate could not meet. His eldest full brother took the land. The remaining personal property was split into nine shares among full and half siblings or their children. [Film No. 40-41]

The Council's letter of 10 July 1811 asked whether Captain J Alexander's will was valid. He had made a mark instead of signing, the will bore no seal and he was rumoured delirious that day. Two attesting witnesses and Dr Crout, present at the signing, confirmed his weakness but also his understanding. Dr Baildon, who visited three times but missed the signing, thought a clear interval improbable. Neither the third witness nor Mr Beale, who wrote out the will, was questioned. The will left everything to the widow while unmarried and a third if she remarried, with the rest to the children, the same pattern as Harper's. [Film No. 41-43]

Henry Smith ruled in May 181[...] that the will should have been proved. The witnesses at the signing outweighed the doctor, a seal was not required, and the sensible terms showed a sound mind. If a will failed, land descended by the island's own laws and customs. Personal property followed the law of the dead

person's permanent home, which mattered on an island of transient officials, soldiers and seamen. By 1811 the Company recognised a local law of land that Yorke had been unable to find in 1753. [Film No. 44-45]

Personalities

Laurence Sullivan, then the Company's chairman, headed the signatures on the letter of 3 February 1762. Francis Baring, chairman in 1792, headed those of 20 December 1792. Charles Yorke, who gave the opinion of 27 November 1753, was probably the son of Lord Chancellor Hardwicke and later briefly Lord Chancellor himself. Orlando Bagley recurred from 1781 into the 1790s, as owner of the witness Yon, perhaps as the abuser of Andrew and finally as an estate in dispute. [Film No. 12, 19, 28, 30, 37, 40]

Conclusion

Between 1753 and 1816 London pressed English legal forms on an island court run by administrators, and its lawyers were still defending the jury in 1816. Slavery was where English law and island interest clashed most sharply. Directors and counsel repeatedly affirmed slaves' standing in court, while island custom and white juries blunted it. By 1811 the island had also gained a recognised local law of land. [Film No. 6-47]

BL Image No.	Page No.	OCR Transcription	Modern Interpretation
<u>1</u>		EAP 1364 St Helena Document Name and Date St Helena - Letters from England 1762-1816 Photographer Aidan Plato Date photographed 14th June 2022 Additional comments	
<u>2</u>		Book cover	
<u>3</u>		WARNING. A poisonous solution containing mercuric chloride has been used in the repair and binding of this volume.	
<u>4</u>		Blank page	
<u>5</u>		Blank page	
<u>6</u>	1	Our Governor and Council of St Helena We have now maturely considered the Subject of several Letters from you relative to the Administration of Justice in Saint Helena and have taken all necessary advice thereon and we are satisfied that we have a right by ourselves our Ministers and Officers to govern the Island of Saint Helena and to hold Courts of Justice therein for trying all kinds of Crimes Offences & Misdemeanors and also for hearing and determining all Civil Actions viz between Party and Party with respect to property) of which our Governor & Council of Saint Helena for the time being are Judges, but all such tryals ought to be by Juries consisting of Twelve Men resident within the Island (or if a sufficient number of Residents cannot be had, then the Juries may be made up of Englishmen happening to be there) and the Convictions Punishments and determinations must be according to the known Laws & Statutes of this Realm, or as near thereto as the nature and circumstances of the Cases will admit of and great care must be taken in criminal Cases not to inflict heavier or different punishments than the Law prescribes. As for Instance, Criminals who are convicted of such Species of Felony as entitle them to benefit of Clergy, the Courts of England before whom they are tried may by act of Parliament sentence	The East India Company's directors wrote to their Governor and Council of St Helena about the way justice was run on the island. 1: The directors reported that they had studied several letters from the Council on the working of the island's courts and had sought full advice on the matter. They were satisfied that the Company, acting through its own ministers and officers, held the right to govern St Helena. That right extended to holding courts to try every kind of crime, offence and misdemeanour. It also covered civil disputes between private parties over property. The Governor and Council in office at any given time sat as judges in these courts. Every trial, however, was to go before a jury of 12 men living on the island. If too few residents could be found, Englishmen who happened to be on the island at the time could make up the number. Verdicts, sentences and rulings had to follow the established laws and statutes of England, or come as close to them as the facts of each case allowed. In criminal cases the judges were to take great care never to impose a harsher or different penalty than the law laid down. The directors offered an example. In England an act of Parliament allowed a court to send a felon whose offence carried benefit of clergy to one of the King's plantations in America. That sentence could not be carried out from St Helena. For such offenders the island's court could order only a flogging or branding in the hand. Death or any heavier penalty was reserved for felons whose crimes the common law or statute placed outside benefit of clergy. 2: Because the Governor and Council had always served as judges and magistrates, the directors wished them to carry on in that role. They saw no need to grant any fresh authority for the purpose beyond what had normally belonged to the Council's existing constitution. Interpretations

BL Image No.	Page No.	OCR Transcription	Modern Interpretation
		them to be transported to some of his Majesty's Plantations in America which mode of punishment ca[...] t be put in practice in Saint Helena, in which cases you can only punish by whipping or burning in the hand, but not by death or otherwise, as in Cases of Felons who are by the Common or Statute Laws not intituled to the benefit of Clergy. As our Governor and Council of Saint Helena have all alone acted as Judges and Magistrates, we think [...] right they should continue so to do and we do not conceive it to be necessary to grant any authority for this purpose, other than that, which has been usual to their Constitution. Margin Notes: 1 2	Benefit of clergy began as the right of churchmen to be tried in church courts rather than secular ones. By the eighteenth century it had become a legal device that spared first offenders convicted of lesser felonies from hanging. The offender was branded on the thumb so that the privilege could not be claimed a second time. Parliament then made transportation to the American colonies the standard sentence for these clergyable felonies, which gave English courts a middle penalty between branding and death. St Helena had no such outlet. The directors' ruling meant that the island's court was left with only the older, lighter punishments for this whole class of crime, and could not reach for the gallows to fill the gap. The directors grounded the island's courts in the Company's own right to govern through its officers, a right that derived from royal charter. In practice this merged executive and judicial power in one body, since the same Governor and Council who ran the settlement also sat in judgement. The insistence on juries and on English statute was the check placed on that combined authority. Every conviction had to pass through a jury and every sentence had to fit English law, so the Council could not simply punish at will. The provision for making up a jury from Englishmen who chanced to be present reflected the island's small settled population. Such men would probably have come from ships lying in the road. The wording also confined jury service to Englishmen, which by implication shut out slaves and anyone of another nation from sitting in judgement.
<u>7</u>	2	With respect to Criminal Matters, we think that all Convictions as by one or more Justices out of Sessions (which must be such only as are warranted by some Act of Parliament to be done by one or more Justices out of Sessions) ought to be by our Governour alone or (in cases where more than one Justice is necessary) together with one or more of the Council as Magistrates, and we think it also proper that you make a distinction between a Quarter & general Session and a Session of Oyer and Terminer, the former being confined to Crimes, Offences, and Misdemeanors of a lesser degree but the latter has a greater Latitude, and therein Treason, Murder Felony &c may properly be tried, however you may hold a session first and either adjourn or put an end to it, and then assume the Business of Oyer and Terminer and for your better direction in the proceedings in Criminal Matters we have sent you some Instructions & Forms in which proceedings our Governor & Council will be considered as Judges or Commissioners of Oyer and Terminer We observe you have convicted for Crimes & Misdemeanors without Juries, but that was certainly wrong, and we would have you for the future try every thing of a Criminal Nature by a Jury either at the Sessions of the peace or Oyer & Terminer, according to the respective Jurisdictions of those Courts, save such Convictions	3: Turning to criminal matters, the directors ruled that any conviction made by justices sitting outside a formal court should come from the Governor alone. Such summary convictions were limited to offences that an act of Parliament allowed justices to handle in that way. Where the law required more than one justice, the Governor was to sit with one or more councillors acting as magistrates. The directors also wanted the Council to keep two kinds of court distinct: the quarter or general sessions and the court of oyer and terminer. The first dealt only with lesser crimes, offences and misdemeanours. The second had a much wider reach and was the proper place to try treason, murder, felony and other grave charges. The Council could open a sessions court first, then adjourn or close it before taking up oyer and terminer business. To guide its criminal proceedings, the directors sent out a set of instructions and model forms. Under these the Governor and Council would sit as judges, or commissioners, of oyer and terminer. 4: The directors had noticed that the Council was convicting people of crimes and misdemeanours without any jury, and told it plainly that this was wrong. From then on every criminal matter was to go before a jury, either at the sessions of the peace or at oyer and terminer, according to which court had jurisdiction. The only exception was the summary conviction that justices could lawfully make outside sessions. The Council's own minutes also showed fines that the directors could find no legal basis for. On 10 March 1759 the Council fined Richard Law £10 10s 0d, payable to the Company, for calling William More "a blackguard scoundrel". English law allowed neither a fine nor imprisonment for such words. More could not have won a lawsuit against Law over them either. Interpretations Oyer and terminer, from the Law French for "to hear and determine", was a commission empowering judges to try the most serious crimes, including those carrying the death penalty. Quarter sessions were the regular courts of county justices, held four times a year and in practice confined to lesser offences. By sending

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		as may be by Justices out of Sessions, and we observe from your Consultations that you have imposed Fines in Cases which do not appear to us warrantable, particularly on the 10th March 1759 you fined Richard Law Ten Shillings to our Cash, for calling William More a Blackguard Scoundrell, for which words he could not by our Law be punished either by Fine or Imprisonment, nor could an Action at Law have been maintained against him at the Suit of William More Notwithstanding we have said that all determinations must	forms that cast the Governor and Council as commissioners of oyer and terminer, the directors gave the island's rulers a clear footing to try capital cases. At the same time the split between the two courts tied each kind of offence to its proper tribunal, as in England. Summary jurisdiction allowed justices to convict without a jury, but only where a specific statute granted that power. Placing it in the Governor's hands alone concentrated a quick and informal form of justice in one office. The directors balanced this by insisting that every other criminal charge go to a jury. The Council's earlier habit of convicting without juries had in effect turned all its criminal business into summary justice. The directors' knowledge of the fine on Richard Law came from the Council's minutes, which were copied and sent home for scrutiny. This was the Company's main means of supervising a distant settlement: London read the island's decisions line by line and corrected them, sometimes years later. The rebuke over the fine rested on English slander law, under which spoken abuse was actionable only if it accused someone of a crime, harmed them in their trade or profession, or imputed certain diseases. A plain insult such as scoundrel fell outside all of these. The fine had also been paid into the Company's own funds, so the Council was using penalties as a tool of local discipline that swelled Company revenue without any lawful warrant.
8	3	must be according to the Laws of England, yet we would not be understood thereby to mean that you shall not put in execution such local Laws as have been all along subsisting, and put in practice for better Government of the Island (we mean Laws which relate as well to Civil & Criminal Matters) such as are not repugnant to the Laws or statutes of this Realm but we desire you will get a System of those Laws compiled and a Copy thereof transmitted to us for our perusal, in order that we may consider of their Propriety. With regard to Proceedings in Civil Cases, we are totally ignorant what Forms & Methods have been hitherto used, and therefore desire you will give us an exact detail of the several Processes used to bring Suits to a hearing, and to let us know whether you have ever proceeded by Juries. We are desirous to make no more alterations in the Administration of Justice in the Island than appear absolutely necessary, and therefore in the mean time, till you have our directions to the contrary, we desire you will proceed in Civil Matters in your usual Forms, and if you have any certain Rules of Practice that you will transmit them to us, for our Consideration It does not appear to us that you have ever had a Sheriff for the Island, to execute Processes & Orders of the Court, nor any Constable or Peace Officer, we are therefore at a loss to know in what manner and by whom the Duty & Offices of Sheriffs and Peace Officers as in England have been executed, and desire to be informed	5: Although the directors had required every ruling to follow English law, they did not mean to stop the Council enforcing the local laws that had long been in force for the better government of the island. This applied to local laws on both civil and criminal matters, provided they did not conflict with English law or statute. The directors did, however, want these laws gathered into an orderly code. A copy was to be sent home so that they could review it and judge whether each law was sound. 6: On civil cases, the directors admitted that they had no idea what forms and methods the island's courts had used until then. They asked for a precise account of each step taken to bring a lawsuit to a hearing. They also wanted to learn whether the Council had ever used juries in civil trials. Their aim was to change the island's system of justice no more than was strictly needed. Until fresh orders arrived, the Council was to handle civil matters in its customary way. Any fixed rules of procedure it followed were to be sent home for the directors to examine. 7: As far as the directors could tell, the island had never had a sheriff to carry out the court's writs and orders, nor any constable or other peace officer. They could not see how, or by whom, the work done in England by sheriffs and peace officers had been performed on St Helena. They asked the Council to explain these arrangements in full. 8: With this letter the directors sent the Statutes at Large, as far as the volumes had been bound, together with the acts passed since. They added Hawkins' Pleas of the Crown and the latest edition of Burn's Justice, which they judged the best works of their kind. The Council was to send home a list of the other law books it held. The directors would then supply whatever titles the island lacked. Interpretations The books sent out formed a working law library for a court with no trained lawyers. The Statutes at Large was the printed collection of acts of Parliament, issued in bound volumes with later acts added as they passed. William Hawkins' Treatise of the Pleas of the Crown was the standard guide to English criminal law, covering offences, trial procedure and punishment.

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		of these Particulars. We now send you the Statutes at large, so far as they are bound up together, also the Subsequent Acts, Hawkins Pleas of the Crown, and the last Edition of Burns Justice, which are the most perfect Books of their kind, we desire you'll send us a Catalogue of what other Law Books you have, and we will send you a Supply of such as we find you want We suppose that Ingue[...] Birch mentioned in your Genl Letter	Richard Burn's The Justice of the Peace and Parish Officer was the everyday handbook of English magistrates, arranged by subject so that a justice could look up his powers on any matter. Together they allowed the Governor and Council, who were administrators rather than lawyers, to follow English practice as the directors now required. The test that local laws must not conflict with English law was the usual limit placed on colonial lawmaking. Asking for the island's laws to be compiled and sent home gave the directors a practical means of applying that test. Once the code was in London, any rule found unsound could be struck down, so the Council's local lawmaking became subject to review from England. The question about sheriffs and constables mattered directly to the reforms in the same letter. In England the sheriff summoned juries, served writs and carried out sentences, while constables made arrests and kept the peace. The directors had just ordered that every criminal case go before a jury. Without an officer charged with summoning jurors and enforcing the court's orders, that instruction had no machinery to carry it out.
2	4	Letter of the 4th December 1757 was tryed by a Court Martial, under the Act of the late King for punishing Mutiny, and desertion amongst our Forces, but we are of Opinion that the Sort of punishment you have inflicted will be in effect no punishment at all, for a Man may be tempted to offend against the Martial Law, in hopes of a Chance of being sent to his Native Country We suppose you considered Evans & Cooksey mentioned in the same Letter as Cheats, but they ought to have been tryed by a Jury, unless you had proceeded against them for unlawfully disposing of the Flour under an act of the 30th of the late King, by which persons unlawfully disposing of the goods of others not being authorized, or employed by the Owner so to do, forfeit Twenty and if the Penalty is not paid directly, the Magistrate Shillings on Conviction before a Magistrate, may commit the Party to the House of Correction for Fourteen days In the same Letter you also say that Mr Wrangham our Secretary represented to you in Council, that Wm Boddington who wrote occasionally under him, had Stolen Six Gold Rings out of a Cupboard in his Office, which he pawned to Langbridge & Legg for Money and Liquors, and that as Langbridge & Legg were, according to their own Confession, to have a large premium for the Money they had lent upon these Rings, you fined them each Twenty Shillings to our Cash, and likewise ordered that they should forfeit their Money and Liquors, and that Boddington should be imprisoned; If these Rings were delivered into the Charge of Boddington, he could only be guilty of a Breach of Trust, and proceeded against for the value in a Civil action	9: The directors took it that Jaques Birch, named in the Council's general letter of 4 December 1757, had been tried by court martial under the late King's act for punishing mutiny and desertion among the Company's troops. They objected, however, to the sentence the Council imposed. In their view it amounted to no punishment at all. A soldier might even break military law on purpose, hoping for the chance to be shipped back to his own country. 10: The directors assumed that the Council had treated Evans and Cooksey, named in the same letter, as swindlers. If so, the pair should have faced a jury. The one exception would have been a charge of wrongfully disposing of the flour under an act passed in the thirtieth year of the late King's reign. That act made anyone who disposed of another person's goods without the owner's authority or employment liable to a penalty of £1 0s 0d on conviction before a magistrate. Anyone who failed to pay at once could be sent by the magistrate to the house of correction for 14 days. 11: The same letter reported that Mr Wrangham, the Company's secretary, had told the Council that William Boddington, who sometimes worked as a clerk under him, had taken six gold rings from a cupboard in his office. Boddington pawned the rings with Langbridge and Legg in return for money and liquor. Langbridge and Legg admitted that they expected a large premium on the money they had advanced against the rings. The Council fined each of them £1 0s 0d, paid to the Company, and ordered that they lose both the money and the liquor. It also ordered Boddington's imprisonment. The directors pointed out that the right course depended on how Boddington came to hold the rings. If they had been placed in his care, he was guilty only of a breach of trust. In that case he could have been sued for their value in a civil action or prosecuted under the same act of the late King. If they had never been entrusted to him, he should have stood trial before a jury as a felon for theft. Before that trial, a single magistrate should have committed him to custody to await it. Interpretations The directors' distinction in Boddington's case turned on a gap in English criminal law at the time. Theft, or larceny, required taking goods out of the owner's possession. A servant or clerk who had been handed goods and then kept or sold them had not taken them in that sense, so at common law he committed a breach of trust rather than a felony. The

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		or prosecuted upon the abovementioned Act of the 30th of the late King but if Boddington was not intrusted with them he ought to have been tryed by a Jury as a Felon, for stealing these Goods and before he was tryed should have been committed by one Magistrate to take his tryal, and in that case Mr Wrangham ought	remedy lay in a civil suit or a narrow statutory penalty. Only if Boddington had no lawful access to the rings could he be tried as a thief, which carried far heavier consequences. The Council's single order of imprisonment ignored this line entirely. Committal by a magistrate was the formal step that held an accused felon in custody and bound the case over for trial. It placed the prosecution under the court's control from the start. Without it, as in Boddington's case, a man was simply locked up on the Council's order with no trial in prospect. The mutiny act under which Birch was tried gave courts martial power over the Company's soldiers for desertion, mutiny and other military offences. The directors' complaint shows that the Council had sentenced him to be sent back to his own country, which suggests he was a foreign recruit. On an island that soldiers could not easily leave, removal from St Helena looked more like a reward than a penalty. The directors feared the sentence would invite other discontented men to offend deliberately. Langbridge and Legg acted as informal pawnbrokers, lending money and liquor against goods left as security and charging a steep premium for the loan. The Council's fine and forfeiture punished that trade as well as the handling of stolen property. The fines once again went into the Company's funds, a practice the directors had already challenged in the case of Richard Law.
10	5	ought to have been sworn to the truth of his Charge against Boddington but as to Langbridge & Legg, if there was Evidence to shew they knew the Rings were stolen, they ought to have been tryed for receiving the Rings knowing them to have been stolen, but if there was no such evidence against them, we do not see how you could proceed to fine them, or adjudge a forfeiture of their Money & Liquors. The Property of the Rings if stolen was not altered, and if they refused to restore them to Mr Wrangham, a Search Warrant might have been granted by a Magistrate, and the Rings should have been carefully preserved till the tryal of the Thief, and then delivered to Mr Wrangham. The circumstance of their taking an exorbitant Premium, could be material only upon trying them for receiving the Goods knowing them to be Stolen and would have been a circumstance to shew they suspected they being Stolen, because they would not lend money upon them without taking more than a Common Interest. 12 As to the Cases of Blacks murdering one another mentiond in the 24th Paragraph of your Letter of the 16 July 1758, we are of opinion they ought to be tryed for Murder, and also for all other Crimes and Misdemeanors, in the same manner as other People, but we hold it improper that you should punish in the manner mentiond in the third Paragraph of your Letter of 18th Decr 1760, in making distinctions betwixt the first and other	If Boddington had been tried as a thief, Mr Wrangham should first have given sworn evidence in support of his charge. Langbridge and Legg stood in a different position. If evidence showed they knew the rings were stolen, they should have been tried for receiving stolen goods. Without such evidence, the directors could see no basis for fining them or stripping them of their money and liquor. Stolen goods still belonged to their owner, so the rings remained Mr Wrangham's property throughout. Had the pair refused to hand them back, a magistrate could have issued a search warrant. The rings should then have been kept safe until the thief's trial and returned to Mr Wrangham afterwards. The steep premium the two men charged was relevant only at a trial for receiving. There it would have served as evidence that they suspected the rings were stolen, since honest lenders would have asked no more than ordinary interest. 12: The directors turned next to the killings among black islanders reported in the 24th paragraph of the Council's letter of 16 July 1758. In their view such killings should be tried as murder. Every other crime and misdemeanour by black islanders was likewise to be dealt with exactly as for anyone else. The directors objected to the scheme of punishment described in the third paragraph of the Council's letter of 18 December 1760. That scheme treated a first offence differently from later ones, a distinction English law did not allow. English law was to guide the Council in this as in all other matters. The directors had also learned that Cossam was sentenced to be hanged, drawn and quartered, with parts of his body displayed in several places. That sentence belonged only to treason. The penalty for murder was hanging by the neck. Under an act passed in the 25th year of George II, the trial judge could also order a murderer's body to be hung in chains or given for dissection. Where either was ordered, it had to form part of the sentence itself. The directors referred the Council to that act for fuller guidance. Interpretations The directors' insistence that black islanders be tried for murder and other crimes like anyone else removed the Council's power to run a separate penal system for

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		Offences, which our Laws do not warrant, and those must be your guide in this, as well as other Matters. We find Cossam was sentenced to be hanged, drawn & quartered, and his Quarters stuck up in several places. This Sentence can only be pronounced in Cases of Treason: the sentence for Murder, is to be hanged by the Neck, & by the Act of the 25th Geo 2 the Bodys of Murderers may be ordered by the Judge before whom they are tryed, to be hung in Chains, or Anatomized, which in such case, must be also made part of the Sentence, for further directions wherein we refer you to that Act	them. Most black people on St Helena were probably slaves, and the Council had evidently devised its own graded punishments, treating first and repeat offences differently. English criminal law of the time drew no such line in fixing sentences. By tying every case to English law, the directors brought slaves accused of crime under the same trial procedure and the same limits on punishment as free men, even though their status as property was left untouched. Hanging, drawing and quartering was reserved in English law for high treason, the crime against the Crown itself. Applying it to a murderer such as Cossam went beyond anything the law allowed. The act of George II the directors cited was the Murder Act of 1752, which aimed to make the death penalty for murder more fearsome than for lesser felonies. It let the judge deny the body a burial by ordering it hung in chains as a public warning or handed to surgeons for dissection. Because this additional penalty had to be pronounced as part of the formal sentence, it could not be added afterwards at the Council's discretion. The point that the rings remained Mr Wrangham's property reflected a basic rule of English law: a thief could pass no ownership to anyone, so a pawnbroker who took stolen goods gained no rights in them. The owner's remedy was to recover the goods, by search warrant if necessary, and they served as evidence at the thief's trial before being returned. The directors also showed how a court could prove guilty knowledge in a receiver. An unusually high charge on a loan suggested the lender knew the goods were risky, and that circumstance could support a conviction where direct proof was lacking.
11	6	13 As to what you mention about Cooksey in the same Letter you did right in not sending him off the Island, before he was tryed, but care must be taken for the future, that Persons charged with Crimes be not kept longer in Prison before Tryal than can be avoided, as an Innocent Man may, by that means, suffer greatly by such Imprisonment 14 Joakim Josef mentioned in the 7th Para of your Letter of the 19th Aug 1758 ought to have been tryed as a Felon in the ordinary way. As to Evans's escape which you mention in the 13th Para of the same Letter, we can only recommend to you, in order to avoid the like in future, to cause criminals to be apprehended as soon as may be 15 As to the Case of Mary Herbert, mentioned in the 28th Para of your Letter of the 14th April 1760, we think there is a Sufficient ground to put her upon her Tryal (which must be done by Indictment before a Jury) in which we can give no other directions, than that there be a full Tryal, and that you thereupon have reference to the Act of 21st James 1st Chap 27 which seems to be very material in this Case. 16 As to the Sixth Paragraph in your Letter of the 9th Septemr last we need only add that as you have a Power to punish the Blacks as well as others in the most ample manner, we	13: The directors approved of the Council's decision, reported in the same letter, not to send Cooksey off the island before his trial. In future, however, the Council was to keep people charged with crimes in prison before trial no longer than was unavoidable. An innocent man could suffer serious harm from a long spell in custody. 14: In the directors' view, Joakim Josee, named in the seventh paragraph of the Council's letter of 19 August 1758, should have been tried as a felon in the normal way. The 13th paragraph of the same letter reported that Evans had escaped. The directors' only advice was that the Council should arrest offenders as quickly as possible so that no one else got away in the same manner. 15: Turning to Mary Herbert, whose case appeared in the 28th paragraph of the Council's letter of 14 April 1760, the directors believed there were good grounds to bring her to trial. This had to be done by formal indictment before a jury. Beyond insisting on a full and proper trial, they offered no further instructions. They did direct the Council to an act passed in the 21st year of James I, chapter 27, which they considered highly relevant to her case. 16: The directors had only a little to add about the sixth paragraph of the Council's recent letter of 9 September. The Council had full power to punish black islanders as well as anyone else. The directors urged it to use that authority to crush the dangerous mood spreading among them, enforcing the law against them as firmly as possible. If the Council believed Pompey's account, the directors saw only one step open to it against those involved in the plot. They could be required to provide reliable sureties for their good behaviour for whatever period the Council thought fit. Anyone unable to find such sureties could be held in prison until they did. For this the Council needed a formal information given under oath by Pompey and by the master. Pompey had to swear to the substance of the information.

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		recommend it to you to exert your authority to quell this dangerous Spirit amongst those People, by putting the laws in execution against them in the most effectual manner. We do not see that any thing can be done against the other Conspirators, supposing you believe Pompeys Account to be true, other than to make them find sufficient Suretys for their good Behaviour for such time as you shall Judge necessary, and to commit them to Prison until such Surety be given, in which case you must have an Information upon the Oaths of Pompey and the Master. The Former must swear to the information & the Master may	Interpretations The act of James I cited in Mary Herbert's case was the 1624 statute against the killing of illegitimate children. It dealt with the difficulty of proving that a newborn had been murdered rather than stillborn. Under it, an unmarried mother who concealed the death of her child was presumed to have murdered it unless she could produce a witness that the child was born dead. The burden of proof fell on the woman rather than the prosecution. The directors' reference to it suggests Mary Herbert was accused of killing an infant, and that the case turned on concealment of the birth or death. Requiring sureties for good behaviour was a form of preventive justice rather than punishment. A magistrate could bind a person over, with others pledging sums of money as guarantees of their conduct, without any trial or conviction. Those who could not find sureties went to prison until they did. For black islanders, most of them probably slaves with no property of their own, finding sureties would have been very hard. In practice the measure could keep suspected conspirators in custody for as long as the Council judged necessary, without proving any crime against them. The information on oath was the sworn written statement that set this procedure in motion. The directors required Pompey, apparently a black informer, to swear to the facts himself. Pairing his oath with that of his master gave the evidence a second, independent support. This was the directors' way of giving the Council firm legal ground before it took action against a group on the word of a single witness. The directors' concern over imprisonment before trial reflected a lasting principle of English law that custody was meant to secure an accused person for trial, not to punish him in advance. On a remote island that depended on shipping and slow correspondence with London, cases could wait a long time before being heard. The directors' warning set a limit on that delay.
12	7	swear that he thinks his life in danger; as these People will hardly be able to find sufficient Suretys, Imprisonment will be the punishment, which may be continued till suretys are found, or you see reason not to doubt their future behaviour, Burns Justice will furnish you with the best form & methods of proceeding in this Case 17 Your sending Stephen Willoughby the Soldier to England of which you take notice in your Letter of the 9th Septemr 1761 is agreeable to a former Letter of Ours to you; but we desire that method may be laid aside for the future 18 We desire you will for the future send us all your Letters Consultations, and proceedings relating to Law Matters, Separate from those relating to other Business London We are the 3d February 1762 Your Loving Friends Lau Sullivan Thos Rous H J Crabb Boulton John Boyd Chas Gough John Harrison G Rooke Richd Warner Bourchier Walton	The directors added that Pompey's master could swear that he believed his life was in danger. Since the men involved would hardly be able to find adequate sureties, imprisonment would in effect be their punishment. It could last until sureties came forward, or until the Council was satisfied that their future conduct gave no cause for concern. Burn's Justice would show the Council the proper form and procedure for the case. 17: In its letter of 9 September 1761 the Council reported that it had sent Stephen Willoughby, a soldier, to England. This followed instructions the directors had given in an earlier letter. They now asked the Council to stop the practice from then on. 18: From then on, the Council was to send home all its letters, minutes and proceedings on legal matters separately from those dealing with other business. The directors wrote from London on 3 February 1762, and the following signed the letter: Laurence Sullivan Thomas Rous H J Crabb Boulton John Boyd Charles Gough John Harrison G Roche Richard Warner Bourchier Walton Richard Seward Henry Savage Frederick Pigou Christopher Baron

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		Richd Seward Henry Savage Fredk Pigou Christr Baron Tho Waters Timothy Tullie Richd Smith J Harrison W Thornton John Dorrien	Thomas Waters Timothy Tullie Richard Smith J Harrison W Thornton John Dorrien Interpretations The master's oath that he feared for his life supplied the legal ground for binding the conspirators over. In English practice a magistrate could demand sureties to keep the peace only when a complainant swore that he went in fear of bodily harm from the person named. The directors openly acknowledged that the black islanders involved could not realistically find sureties. The procedure therefore let the Council imprison suspected plotters for an open-ended term without convicting them of anything, while keeping within the forms of English law. The order to stop sending soldiers such as Stephen Willoughby to England reversed the directors' own earlier instruction. Earlier in the same letter they had complained that shipping Jaques Birch back to his own country was no punishment at all and might tempt others to offend. The change of policy over Willoughby probably rested on the same concern that removal from the island had become an outcome some soldiers wanted. The demand that legal papers come home separately was a practical step in the directors' new supervision of island justice. Legal business could then be passed straight to the Company's lawyers for review without being buried among reports on shipping, stores and accounts. Taken with the law books, model forms and demand for a compiled code, it shows the directors building a regular channel through which London could check each of the Council's judgements. The signatures are those of the Company's directors meeting as the Court in London. Laurence Sullivan, whose name heads the list, was then chairman of the East India Company and one of its most powerful figures. A letter carrying this many signatures spoke with the full authority of the Company, which gave its rulings on the island's courts the force of standing orders.
13	8	Our Governor and Council of Saint Helena 1 Having taken the proper Advice on the subject of your Letter concerning Proceedings in Civil and Criminal Matters in the Courts established on the Island, you are informed in answer to the 23d Paragraph of your Letter of the 17th June 1762 and Paragraph 5 of that 25th August 1762 that we will examine the System and Law Proceedings you have transmitted to us, at present we do not find it necessary to send over a fit Person to assist you in the execution of our Instructions relative to Criminal and Civil Proceedings, but we desire you will Proceed according to your usual forms taking care to adapt them to those you have lately received from Us, and to determine nothing Criminal or Civil without a Jury. 2 In reply to the 4th Paragraph of the last mentioned Letter, A Sheriff, Clerk of the Peace and a Constable, or more than one Constable if the Duty require it, are necessary Officers	The East India Company's directors wrote again to their Governor and Council of St Helena on the conduct of the island's courts. 1: After taking proper legal advice on the Council's letters about civil and criminal proceedings in the island's courts, the directors sent their reply. It answered the 23rd paragraph of the Council's letter of 17 June 1762 and the third paragraph of its letter of 12 August 1762. The directors promised to examine the code of local laws and the court procedures the Council had sent home. For the time being they saw no need to send out a qualified person to help the Council carry out their instructions on criminal and civil cases. The Council was to keep to its customary procedures, adjusting them to match the forms the directors had recently sent. No criminal or civil case was to be decided without a jury. 2: Answering the fourth paragraph of the letter of 12 August 1762, the directors ruled that the island needed a sheriff, a clerk of the peace and a constable. More than one constable could be appointed if the workload demanded it. The Council was never to leave these posts unfilled. The fees charged by clerks of the peace in the English counties did not suit the island at all. Those fees had also risen sharply in England because of stamp duties. The Council was therefore to draw up a scale of fair and moderate fees for the time being. The directors would send further guidance from London if they found they could help.

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		and you are never to be without them. The Fees received by the Clerks of the Peace in the several Counties in England are not at all adapted to your Island, and they are greatly augmented here by the Stamp Duties, therefore you must consider of a Table of reasonable and Moderate Fees for the present, and if we find we can assist you with any lights or Directions from hence we will do it 3 If the Blacks have no Idea of Deity, nor any kind of Religion or worship amongst them, certainly an Oath according to our forms, would be no more binding upon them than an Asseveration or Declaration; but if they worship or acknowledge any God, or hold any thing Sacred to which they pay adoration, or by which they are used to swear, in such case, an Oath [...] be formed, which will be binding on their Consciences, which [...] serve for answer to the 5th Paragraph of the said Letter	3: The directors then dealt with the question of oaths for black islanders, raised in the fifth paragraph of the same letter. If they had no notion of a god and no religion or worship of any kind, an oath in the English form would bind them no more than a plain statement or promise. If, however, they worshipped or recognised any god, or revered anything sacred, or had some customary object to swear by, an oath could be framed on that basis. Such an oath would then bind their consciences. Interpretations The directors' advice on oaths determined whether black islanders could give evidence at all. English courts accepted testimony only on oath, and an oath was valid only if it bound the witness's conscience through fear of divine punishment. The directors followed the reasoning of the English courts, which in 1744 allowed a Hindu merchant's witnesses to swear according to their own faith. By permitting an oath framed on whatever the witness held sacred, the directors opened the way for slaves and other black islanders to testify. This mattered directly to cases such as the plot reported by Pompey, where the whole proceeding rested on a black witness's sworn information. The order to appoint a sheriff, clerk of the peace and constables answered the directors' own question in their letter of 3 February 1762 about who performed these duties on the island. The sheriff summoned juries and carried out the court's writs and sentences. The clerk of the peace kept the records of the sessions, drew up indictments and handled the court's paperwork. Constables made arrests and kept order. Without them, the directors' insistence that every case go before a jury could not work in practice. Court officers in this period were paid largely through fees charged for each document and service rather than by salary. The fees therefore set the real cost of going to law. English stamp duties, taxes charged on legal papers, had pushed those costs higher still. By ordering a local scale of moderate fees, the directors kept justice affordable on a small island and prevented the new officers from importing the full English charges. The island's legal system was thus deliberately cheaper than England's, even as its procedures were brought closer to English practice.
14	9	4 On the subject of your 6 Paragraph you will observe that the Mutiny Act in which your Island is included extends to all Persons Listed or in the Companys Pay as Soldiers, if therefore any Pay is given to those who compose your Militia there is no Doubt but they are subject to that Law and the Articles of War, otherwise we think they are not, nor would the Militia raised in England be liable to Martial Law, but by express words in the Acts of Parliament for that purpose, nevertheless we are of opinion, that it may be very fitting to form and Publish Rules and ordinances for the good Government of your Militia, inflicting thereby Punishments for Crimes and Misdemeanors, but so as not to extend to loss of Life or Limb 5 Let it be remarked in reply to the 9th Paragraph of your said Letter, that it is very immaterial whether in Processes Civil	4: Replying to the Council's sixth paragraph, the directors explained that the Mutiny Act extended to St Helena. It covered everyone enlisted as a soldier or drawing pay from the Company in that capacity. If the men of the island's militia received any pay, they were therefore plainly subject to the act and to the Articles of War. If they were unpaid, the directors believed neither applied to them. Even the militia raised in England was not under martial law unless an act of Parliament expressly placed it there. The directors nonetheless thought it would be sensible for the Council to draw up and publish regulations for the proper management of the militia. These could set penalties for crimes and misdemeanours, provided no punishment went as far as death or the loss of a limb. 5: In answer to the ninth paragraph of the same letter, the directors observed that naming a parish in civil or criminal proceedings made no real difference. Describing a party as belonging to a particular town or place was enough. The directors wrote from London on 17 December 1762, and the following signed the letter: Robert [...] Christopher Baron J Harrison William Snell Thomas Rous John Dorrien

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		or Criminal any Parish is specified, tis sufficient if the Party be described as of any particular Town or Place, We are London 17th Decemr 1762 Your Loving Friends Robt Burrow Christr Baron J Harrison Wm Snell (Signed) Tho Rous John Dorrien Cha Gough Timothy Tullie G Stevens Geo Dudley Bourchier Walton W Thornton Richd Seward J H Boddington Henry Savage John Browne Hen Radley Richard Warner Wm Webber Richd Smith Tho Waters	Charles Gough Timothy Tullie G Steevens George Dudley Bourchier Walton W Thornton Richard Seward [...] Boddington Henry Savage John Browne Henry Hadley Richard Warner William Webber Richard Smith Thomas Waters Interpretations The directors' answer on the militia turned on pay as the test of military status. A man in the Company's pay as a soldier fell under the Mutiny Act and could be tried by court martial, as Jaques Birch had been. An unpaid militiaman remained a civilian, answerable only to the ordinary courts with their juries. The Council could discipline the militia through its own regulations, but the ban on penalties touching life or limb kept those regulations within the limits of the Company's local lawmaking. Only Parliament could authorise death or mutilation, so the gravest military punishments stayed beyond the Council's reach unless the men were paid soldiers. The remark about parishes concerned the formal description of a party in legal documents. English law required every indictment and writ to state the defendant's rank or occupation and the town or place where he lived, and a wrong or missing description could defeat the whole proceeding. In England the parish was the natural unit for this. St Helena had no network of parishes to match, so the directors confirmed that naming a town or place would satisfy the rule. This removed a technical ground on which the island's cases might otherwise have been challenged. The Articles of War were the detailed code of military discipline issued under royal authority, listing offences such as desertion, mutiny and disobedience together with their penalties. Together with the Mutiny Act, they formed the legal basis on which courts martial tried and punished soldiers.
15	10	Our Governor and Council of St Helena 1 We have as an invariable Rule prescribed it to Ourselves, not to mix in our Advices to you Commercial Concerns with those of Law, in consequence this reply to what you have written, on the Latter subject in the 3 and 4th Para of your Letter of the 2d October last by the Calcutta is given 2 No written Deposition or Affidavit can be received as Evidence against a Felon, or in any Criminal Case whatsoever, but the Magistrate has a Power, and always ought for the Sake of Justice, to bind the Prosecutor in a Recognizance of Fifty or one Hundred Pounds according to the Flagrancy of the Offence to prosecute the Felon at the next Sessions of Jail Delivery, and the Witnesses in Recognizance of Twenty or Thirty Pounds each, to give Evidence at the Tryal. If after this the Person robbed, or the Witnesses will leave the Island, their Recognizance will	The directors wrote once more to their Governor and Council of St Helena on points of law. 1: The directors explained that they had made it a fixed rule never to mix commercial business with legal matters in their letters to the island. Their reply therefore dealt only with the legal questions raised in the third and fourth paragraphs of the Council's letter of 2 October 1762. That letter had reached London aboard the <i>Calcutta</i>. 2: No written statement or sworn affidavit could be accepted as evidence against a felon, or in any criminal case at all. A magistrate could, however, bind the prosecutor by a formal pledge to pursue the case at the next gaol delivery. Depending on how serious the offence was, the pledge was to be set at £50 0s 0d or £100 0s 0d. Each witness could likewise be bound in £20 0s 0d or £30 0s 0d to give evidence at the trial. The directors considered that magistrates ought always to take these steps in the interests of justice. If the victim of a robbery or any witness left the island after being bound, the sum pledged would be forfeited. The directors knew of no lawful way to stop them leaving. 3: Pardoning a condemned criminal was among the most important powers belonging to the Crown. None of the Company's charters had passed that power to it. Whenever the Council saw reason to postpone the execution of a death sentence, it was to

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		be forfeited, but We know of no method to detain them 3 The Pardoning of Criminals after condemnation is one of the most essential Prerogatives of the Crown, and is not delegated by any of our Charters, therefore whenever you find cause to respite such a Sentence you must state the matter specially to us, in order that we may apply on proper Grounds to his Majesty for His Royal Pardon London We are 12th Janry 1763 Your Loving Friends J Manship J Harrison Christr Baron Wm Webber J H Barrington R Bowcom John Brown (Signed) Richd Seward Hen Hadley Thos Waters Bourchier Walton G Stevens Richd Smith W Thornton Thos Rous John Dorrien Timothy Tullie Cha Gough Richd Warner Wm Snell Geo Dudley	send the directors a full account of the case. They could then petition the King for a royal pardon on proper grounds. The directors wrote from London on 12 January 1763, and the following signed the letter: J Manship J Harrison Christopher Baron William Webber [...] Barrington [...] Bowson John Brown Richard Seward Henry Hadley Thomas Waters Bourchier Walton G Stevens Richard Smith W Thornton Thomas Rous John Dorrien Timothy Tullie Charles Gough Richard Warner William Snell George Dudley Interpretations A recognizance was a formal acknowledgement of debt made before a magistrate, which became payable only if the person bound failed to do what was promised. In this period English criminal cases depended on private prosecution: there was no public prosecutor, and a case went forward only if the victim or another accuser pursued it. Binding the prosecutor and witnesses gave the court a financial hold over them so that trials would not collapse for want of an accuser. The graded sums, higher for the prosecutor and scaled to the gravity of the crime, show how the court measured the pressure needed to secure attendance. On St Helena this mechanism met a particular weakness. Many victims and witnesses were probably seamen, soldiers or passengers passing through on Company ships, who could sail away before the next sitting of the court. The directors conceded that forfeiting their pledges was the only sanction available. Since written depositions could not stand in for live testimony, a witness's departure could leave the prosecution with no case at all. Gaol delivery was the commission under which judges tried every prisoner held in gaol awaiting trial, emptying it of pending cases. Its use here matches the directors' earlier instruction that the Governor and Council sit as commissioners of oyer and terminer, giving the island's criminal court the full powers of an English assize. The ruling on pardons marked the outer limit of the Company's delegated authority. The Council could try and sentence felons, but it could not forgive a condemned man. Its only power was to postpone execution while the case went to London and a petition went to the King. Given the length of the voyage in each direction, a reprieved prisoner on St Helena would probably wait many months for the outcome. The opening rule on keeping commercial and legal business apart put into practice the directors' request of 3 February 1762 that the Council send its legal papers separately. The directors now applied the same discipline to their own letters, so that the legal correspondence formed a distinct series that could be kept and consulted on its own.

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16	11	Our Governor and Council of St Helena 1 In conformity to the established [...] Practice We now by this separte Letter acknowledge the receipt of your Letters of the 6th March 1 of May and 23 June and give our Sentiments and directions founded on the Advice & opinion of our Sollicitor for your Government on the Points stated in those Letters with respect to your Judicial Proceedings 2 Your Proceedings in the three General Quarter Sessions according to the Records transmitted of them seem to have been very legally and properly conducted 3 Your Resolution advised under the 1 of May to have all causes determined by Juries is perfectly right The distinction between Capital Crimes and others is so fully explained in the Books We have sent you, which refer to the Statutes constituting such Crimes, that We think it impossible for you to err, but if ever a case should happen where the condemnation of a convict should appear doubtful you will suspend execution until you receive Directions from hence, upon the case to be fully stated and transmitted to Us 4 The Constables Staves which were desired, you will receive with the other Articles consigned to the Island by these Ships 5 There is no [...]ection to the Table of Fees settled for the Clerk of the Peace and Goaler as entered on your Consultn of the 4 July last, except that the two first to the Goaler cannot	The directors wrote a further letter to their Governor and Council of St Helena on the island's courts. 1: Following their settled practice, the directors used a separate letter to confirm receipt of the Council's letters of 6 March, 1 May and 23 June. In it they set out their views and instructions on the legal questions those letters raised. Their guidance rested on the advice of the Company's solicitor. 2: The directors had examined the records sent home from the Council's three general quarter sessions. The proceedings appeared to have been conducted lawfully and in good order. 3: The Council's decision, reported in its letter of 1 May, to have every case settled by a jury was entirely correct. The difference between capital crimes and lesser offences was set out so fully in the books already sent that the directors thought the Council could hardly go wrong. Those books cited the statutes that made each offence capital. Should a case ever arise in which a death sentence seemed open to doubt, the Council was to postpone the execution. A full account of the case was to be sent to London, and the Council was to wait for instructions before acting. 4: The constables' staves the Council had asked for would arrive with the other goods shipped to the island in the current fleet. 5: The directors accepted the scale of fees fixed for the clerk of the peace and the gaoler, as recorded in the Council's minutes of 4 July. Their one reservation concerned the first two charges allowed to the gaoler. Interpretations In English practice the gaoler drew most of his income from fees charged to prisoners rather than from a salary. Prisoners paid on being committed and again on release, and even a man found not guilty could be held until he settled what he owed. The practice was widely criticised in England as a source of extortion. By fixing a table of fees in its own minutes and submitting it to London, the Council put the gaoler's charges under public control from the outset. The directors' objection to two of the gaoler's charges suggests they scrutinised those fees with particular care. A constable's staff was the badge of his office, usually painted and bearing the royal arms. It identified him as an officer of the law when he made an arrest or called on bystanders for help, and resisting a man who carried one meant defying lawful authority. The Council's request shows that it had now appointed constables, as the directors required in their letter signed on 17 December 1762. That even these emblems had to be shipped from England indicates how new the island's formal police office was. The review of the quarter sessions records, and the reliance on the Company's solicitor, show the supervisory system the directors had set up now working as intended. The Council sent its court records home, a trained lawyer examined them, and the directors returned a considered verdict on their legality. The order to postpone any doubtful execution repeated the rule laid down on 12 January 1763. Only the Crown could pardon, so any hesitation over a death sentence had to be referred to London before it became irreversible.
17	12	cannot be imposed upon the Prisoner, nor can he be compelled to pay them, and therefore the Goaler must have such Allowance or Fees in some other Way 6 The 3 Paragraph of our Letter dated the 17th Decemr 1762 will suffice for an answer to the doubts you entertain concerning the Oaths of Blacks as mentioned in your 4th Para	The first two charges proposed for the gaoler could not lawfully be laid on a prisoner, and no prisoner could be forced to pay them. The gaoler would therefore have to receive that income through some other allowance or fee. 6: The directors referred the Council to the third paragraph of their letter of 17 December 1762. That paragraph answered the doubts about oaths for black

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		under the 1 of May 1762 7 In reply to your Question put in the 1 Paragraph of the Letter of the 23 June, We are to tell you that there is no doubt but recognisances forfeited where the Parties quit the Island may be levied at any time after their return to it again 8 On considering the Governors Letter of the 15th July last, We do agree that the Lieut Governor do preside in the Courts of Justice during the continuance of the present Governor Mr Hutchinson on the Island, but on his coming away all future Governors are to preside in the said Courts as has been always the Custom except in case of Sickness or any unavoidable impediment, at which time the Lieutenant Governor is to preside London We are 16 Novr 1763 Your loving Friends (signed) John Harrison William Snell Christ Baron Richd Warner Timothy Tullie Charles Chambers Wm Webber John Boorn George Amyatt Hen Crabb Boulton John Dorrien Lau Sullivan John Manship Fredk Pigou Robert Burrow W Thornton J Purling Richd Seward G Rooke Henry Hadley	islanders which the Council had raised in its letter of 1 May 1763. 7: Answering the question in the seventh paragraph of the Council's letter of 23 June, the directors confirmed that a pledge forfeited by someone who left the island could be enforced at any time after that person came back. 8: The directors had considered Governor Hutchinson's letter of 15 July. They agreed that the Lieutenant Governor should preside over the island's courts for as long as Hutchinson remained on St Helena. Once he left, every future Governor was to preside in person, as had always been the practice. Only illness or some other unavoidable obstacle would excuse him, and in that event the Lieutenant Governor was to take his place. The directors wrote from London on 16 November 1763, and the following signed the letter: John Harrison William Snell Christopher Baron Richard Warner Timothy Tullie Charles Chambers William Webber John [...] George Amyatt Henry Crabb Boulton John Dorrien Laurence Sullivan John Manship Frederick Pigou Robert Burrow W Thornton J Purling Richard Seward G Rooke Henry Hadley Interpretations The ruling that the gaoler's first two charges could not fall on prisoners set St Helena ahead of England. English gaolers went on collecting fees directly from prisoners, including those acquitted, until Parliament began to curb the practice in 1774. The directors instead required the gaoler to be paid through some other allowance, so that a person's release did not depend on his ability to pay. On this point the island's arrangements were more humane than those of the mother country for at least a decade. The answer on forfeited recognizances completed the directors' ruling of 12 January 1763. At that date they admitted they knew of no lawful way to stop a bound witness or prosecutor from sailing away. The forfeited sum, however, became a debt owed to the court that did not lapse with time. Anyone who returned to St Helena, as seamen and Company servants often did, could then be made to pay it. On an island visited repeatedly by the same ships and men, this gave the pledge real force. The arrangement over who presided in court was confined to Governor Hutchinson personally. The directors treated the Governor's presence on the bench as a fixed part of his office, reinforcing the principle set out in their earliest letter in this series that the Governor and Council together formed the island's judiciary. Allowing the Lieutenant Governor to preside was a concession to one man that ended with his departure. It was not to become a precedent that could shift judicial authority away from the island's chief officer. The reference back to the letter of 17 December 1762 shows how the correspondence crossed at sea. The Council raised its doubts about oaths on 1 May 1763, before the directors' answer of the previous December could have reached the island. The

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			directors therefore simply pointed to the ruling already on its way.
18	13	Opinion of the Company's Standing Counsel on Law matters mentioned in the St Helena Lr of the 31 May 1780 I know not how to advise a proceeding when I cannot discover with certainty the authority or the laws by which justice is administered By a Charter of Ch 2d a complete Legislative power over the Island of St Helena extending even to life is delegated to "The Governor and Company of London trading to the East Indies" which has been confirmed by subsequent Charters in General terms as far as the Powers &c &c might be legally exercised and I apprehend all the regulations now subsisting on the Island have been made by the Company under this Grant. At least I can find no other. The like Grant of the like authority over the Island of Bombay has not been thought sufficient, and possibly the Company may think fit at some future period to obtain a Charter of Justice for St Helena. It may then deserve consideration what distinction should be made between Whites and their Black Slaves, for to give them equally the benefit of English Laws would be to abolish the relation of Master and Slave Presuming the Governor and Council to have authority to administer Justice according to English Laws I should not advise a proceeding under the Act of 22 & 23 Ch 2 within which the case does not appear to me to fall but for an Assault and misdemeanor and if the Master be convicted he may be punished by fine and imprisonment, as the offence under all	The Company's standing counsel gave a written opinion on the legal questions raised in the St Helena Council's letter of 31 May 1780. Counsel began by saying that he found it hard to recommend any course of action when he could not establish with certainty under what authority, or under which laws, justice on the island was administered. A charter of Charles II had handed the East India Company full power to make laws for St Helena, reaching even to matters of life and death. Later charters had confirmed that grant in general terms, so far as its powers could lawfully be used. Counsel believed that every regulation then in force on the island rested on this grant, since he could trace no other source. An equivalent grant over Bombay, however, had been judged inadequate. Counsel suggested that the Company might one day decide to seek a royal charter of justice for St Helena. If so, it would need to consider what legal distinction to draw between white islanders and their black slaves. Extending the full protection of English law to slaves on equal terms would, in counsel's view, dissolve the bond between master and slave altogether. Counsel then turned to the case itself. On the assumption that the Governor and Council did have authority to administer English law, he advised against prosecuting under the act of the 22nd and 23rd years of Charles II. The facts did not appear to him to fall within that statute. The proper charge was assault, tried as a misdemeanour. If the master were convicted, the court could punish him with a fine and imprisonment. Interpretations Counsel's warning exposed a direct conflict with the directors' own rulings of almost 20 years earlier. On 3 February 1762 they had insisted that black islanders be tried for murder and every other crime exactly as others were, with English law as the only guide. Counsel now pointed out that full equality under English law could not coexist with slavery. The concern reflected developments in England, where the courts had held in 1772 that English common law gave no support to slavery on English soil. A formal charter bringing English law to St Helena therefore risked undermining the legal basis for owning slaves there. Counsel's answer was that any such charter would need an express distinction between free and slave, written in from the start. The act of Charles II that counsel set aside was the Coventry Act of 1671. It made it a felony, punishable by death without benefit of clergy, to maim or disfigure someone deliberately, for instance by slitting the nose or cutting out the tongue, with malice planned in advance. Its mention here indicates that the case concerned a master accused of seriously injuring one of his slaves. By steering the prosecution towards simple assault, counsel moved the case from a capital felony to a misdemeanour punished by fine and imprisonment. The practical effect was that a master who harmed a slave faced a far lighter penalty than the most serious statute allowed. Counsel's doubt about the island's legal foundation went further than anything the directors had admitted. The earlier letters assumed that the Company's charters gave the Governor and Council full judicial power. Counsel instead traced every local regulation to a single delegated lawmaking grant and questioned whether it was enough. The comparison with Bombay was pointed. That settlement, also received by the Company from the Crown under Charles II, had needed a separate royal charter of justice to put its courts on a secure footing. St Helena had never

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			received one, so its courts had operated for over a century on authority that the Company's own lawyer regarded as uncertain. Standing counsel was the barrister retained by the Company to advise it on legal questions as they arose, distinct from the solicitor whose advice shaped the directors' letter of 16 November 1763. A barrister's written opinion carried greater weight on questions of constitutional authority and criminal law, which explains why a question touching the island's whole legal basis was put to him.
19	14	all the circumstances shall be thought to deserve. The danger of admitting the testimony of the Slave against the Master need not embarrass the Court as the testimony of the Surgeon with the confession of Worrah himself will be sufficient and joined to the Evidence of Jon the Slave of Mr Orlando Bagley will be complete proof of the whole transaction. At the same time I see no legal objection to the testimony of any human being who appears to have a sense of Religion and is Sworn according to the forms of his Religion (Signed) Geo Rous Inner Temple Jany 5th 1781	Counsel advised that a convicted master could receive whatever fine and term of imprisonment the full circumstances of the offence seemed to warrant. He added that the court need not be troubled by the risk of allowing a slave to give evidence against his master. The surgeon's evidence, together with Worrah's own confession, would be enough to convict. Combined with the evidence of Yon, a slave belonging to Mr Orlando Bagley, it would prove the entire incident beyond doubt. Counsel nonetheless saw no legal bar to accepting evidence from any person who showed a sense of religion and took an oath in the form his own faith required. George Rous signed the opinion at the Inner Temple on 5 January 1781. Interpretations Counsel built the case so that it did not depend on the injured slave speaking against his own master. The surgeon could describe the injuries, Worrah's confession supplied his own admission, and Yon belonged to a different owner, Orlando Bagley. None of this evidence required a slave to testify against the man who owned him. That was the step white islanders regarded as most threatening to a master's authority over his household. By arranging the proof this way, counsel secured a conviction while avoiding a precedent that the slave-owning community would probably have resisted. Counsel's closing remark nevertheless confirmed that no such restriction existed in law. Any witness with a sense of religion, sworn according to the forms of his own faith, was competent to give evidence. This matched the directors' ruling of 17 December 1762 on oaths for black islanders. Taken together with counsel's earlier warning about the relationship between master and slave, the opinion shows the tension at the heart of the island's justice. The law allowed slaves to testify, while practical caution counselled against leaning on that right in a case against an owner. The Inner Temple was one of the four Inns of Court in London, the societies to which every English barrister belonged and where many kept their chambers. Signing from there marked the opinion as the formal advice of a practising barrister. The dates reveal how slowly justice moved between St Helena and London. The Council's letter was written on 31 May 1780, and counsel's opinion was dated 5 January 1781. The opinion then had to travel back to the island before any trial could proceed. Worrah's case therefore probably waited well over a year for the legal guidance that would shape the charge against him.
20	15	Solicitors Opinion respecting Mr Richard Goodwin. I have perused the Letter from the Governor and Council of St Helena dated 25 October 1779 Paragraph 32 respecting the Claims made to the Estate of Captain Richd Beale Deceased, and also the Petition of Richard Goodwin	The Company's solicitor gave a written opinion on the claim brought by Mr Richard Goodwin. The solicitor had examined the 32nd paragraph of the St Helena Council's letter of 25 October 1779, which dealt with competing claims to the estate of the late Captain Richard Beale. He had also read Goodwin's petition setting out the claim and Mr Matthew Bazett's reply to it. To settle the rights of the two parties, he further consulted the island's Book of

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		by which the Claim was made, and Mr Matthew Bazett's Answer thereto, And in order to answer the Question put respecting the rights of the Parties I have also perused the Book of Laws and Ordinances of St Helena containing the Original Constitution and Establishment of the Island under the Charter from the Crown and the Subsequent Orders given and variations made by the Company from 1673 to 1714. Mr Bazett is very much mistaken in supposing that all the Lands at St Helena vested in private Persons are only Chattel Interests which go to the Executors and not to the Heirs at Law. The whole Island was granted to the Company in fee Simple and the very first Commission of Government from the Company (dated 19 December 1673) Directs that there should be Conveyed unto each Planter both old and New, and to his Heirs and Assigns for ever under the Company's Common Seal, his proportion of Land he performing Suits and Service. These Orders were afterwards frequently repeated, And it appears that many Grants were made subject to certain payments to the Company as Chief Lords of the fee, and to the Performance of certain Services All persons who had Grants of this kind made to them became seized of the Estate so granted to them as Estates of Inheritance Descendable to their Heirs (if they Died Intestate) Subject to the same Payments and Conditions and performances of	Laws and Ordinances. That volume recorded the original constitution and settlement of St Helena under the Crown's charter. It also contained the later orders and changes the Company made between 1673 and 1714. In the solicitor's view, Bazett was badly wrong to argue that all privately held land on St Helena counted merely as personal property. On that argument the land would pass to a dead owner's executors rather than to his legal heirs. The solicitor explained that the Crown had granted the whole island to the Company outright and in perpetuity. The Company's very first commission of government, dated 19 December 1673, ordered that every planter, whether long settled or newly arrived, receive his share of land under the Company's common seal. The grant was to him and his heirs and successors for ever, in return for the dues and services owed to the Company. These orders were repeated many times afterwards. Many grants were made on condition of set payments to the Company as overlord and the performance of specified services. Everyone who received such a grant held the land as an inheritable estate. If the holder died without a will, the land passed to his heirs, still carrying the same payments and conditions. Interpretations The dispute turned on a basic division in English property law. A lease or other lesser interest in land counted as a chattel, a form of personal property. On the owner's death it passed to his executors, who used it to pay his debts and legacies. A freehold held in fee simple was real property, and if the owner died without a will it went to his heir at law, normally the eldest son. Bazett's argument would have treated every holding on St Helena as a chattel, placing the land in the executors' hands. The solicitor's reading gave it to the heir. The outcome decided who received Captain Beale's land and whether his creditors could reach it, though the page does not show which side each claimant took. The solicitor rested his case on the feudal structure of the island's settlement. The Crown granted the island to the Company in fee simple, the fullest form of ownership. The Company then granted land on to planters while remaining the chief lord from whom all holdings derived. The payments and services attached to each grant, such as annual rents and duties owed in return for the land, were the marks of that relationship. They did not reduce the planter's holding to a lease. Instead they confirmed that he held an inheritable freehold under the Company, just as English landholders held under a superior lord. The Book of Laws and Ordinances served as the island's founding legal record. It gathered the Company's commissions, orders and changes from the first settlement in 1673 through to 1714. The solicitor's use of it shows how, in the absence of any local statute book, questions of title on St Helena were settled by going back to the Company's original instructions to its first planters.
21	16	of the same Services as were mentioned in the Original Grants, many of these Estates were afterwards purchased in by, or became forfeited to the Company, and some Lands were never granted out, so that the Company have always been possessed of a considerable Estate in the Island, parts whereof under Orders from the Company have from time to time been let upon Lease for terms of Years these Leasehold Interests will undoubtedly go to the Executor and not to the Heir at Law. The papers respecting the Lands of which Mr Richard Beale Died possessed do not distinguish whether they are	Heirs who held such grants remained bound by the same payments, conditions and services laid down in the original grants. Over time the Company bought back many of these estates, and others were forfeited to it. Some land had never been granted out at all. The Company had therefore always owned a sizeable estate on the island. On the Company's orders, parts of it were let from time to time on leases for fixed terms of years. The solicitor had no doubt that such leaseholds passed to the executor, not to the heir at law. The papers on the land Richard Beale held at his death did not make clear which kind of holding it was. It might be inheritable land, originally granted by the Company to the holder and his heirs and successors.

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		Lands of Inheritance Vizt such as were originally granted by the Company To hold to the Grantee his Heirs and Assigns, or were only Chattel Interests that is such as have only been Leased out by the Company for a term of Years, if they are of the former sort, they will descend to whoever is Mr Beales Heir at Law if they are of the Latter Description, they will belong to his Administrators and must be accounted for by them to his next of kin as part of his personal Estate, all the the Direction that can be given upon this occasion in answer to the Governor and Councils Letter is that they and the parties should examine the title of the Lands to see whether they were Estates of Inheritance or only Chattels Interests. If Captain Richard Beale had but one Brother or if he had more Brothers than one and Onesiphorus Beale was the Elder of the Brothers then Anthony Beale will be the Heir at Law of his Uncle, but he must go to and reside at the Island upon his Estate within two Years after his Uncles Decease, or take care that there shall be two Inhabitants with two Cows upon every twenty Acres of Land, otherwise they will	Alternatively it might be personal property, held only on a lease from the Company for a term of years. Inheritable land would pass to whoever was Beale's heir at law. Leased land would belong to the administrators of his estate, who would have to account for it to his next of kin as part of his personal property. The only guidance the solicitor could offer the Governor and Council was that they and the claimants should examine the title deeds. These would show whether each holding was an inheritable estate or a lease. The solicitor then set out who the heir would be. If Captain Richard Beale had only one brother, or if he had several and Onesiphorus Beale was the eldest, then Anthony Beale would be his uncle's heir at law. Anthony would, however, have to travel to the island and live on the estate within two years of his uncle's death. Failing that, he would have to ensure that every 20 acres of the land carried two inhabitants and two cows. Interpretations The residence and stocking condition shows what the Company expected in return for granting land. St Helena's value lay in its role as a garrisoned port supplying passing ships, so the Company needed its land settled, farmed and able to support a population that could help defend it. An owner who lived elsewhere and left his land empty contributed nothing to either purpose. Requiring either the heir's own residence or two people and two cows on every 20 acres made each grant work for the island. The penalty for breach was probably forfeiture, which explains the solicitor's earlier remark that many estates had come back into the Company's hands. The solicitor's reasoning on the heir followed the English rule of primogeniture with representation. Land descended to the eldest line, and where the eldest brother was already dead his son stood in his place. Anthony Beale could only inherit if his father, Onesiphorus, was the eldest of Richard Beale's brothers, since otherwise an elder brother's line would come first. If the land proved to be leasehold, primogeniture would not apply at all. The administrators would instead share its value among the next of kin, together with the rest of Beale's personal property, under the rules that governed the estates of those who died without a will. The solicitor's inability to tell from the papers what kind of land Beale held exposed a serious weakness in the island's records. The Company was both overlord of freehold grants and direct landlord of leased land, and the two often lay side by side. Unless each holding's original grant or lease could be found, the most basic question in any inheritance, who received the land, could not be answered. This was precisely the problem that a proper register of deeds and leases existed to solve.
22	17	will be forfeited to the Company according to a Clause in the Company's Regulations under Seal dated 28 March 1679 (Signed) John Smith Case for the East India Company The Company is possessed of the Island of St Helena as their sole Property whereby their Governor and Council under Charter of Justice they hold Courts of Oyer and Terminer for the Trial of Criminal Offences as well as Civil Courts of Judicature The Inhabitants of the Island consist partly of Persons in the Company's Service and partly of Natives the Descendants of English People	Unless those conditions were met, the land would be forfeited to the Company under a clause in its sealed regulations dated 2 March 1680. John Smith signed the opinion. A statement of the facts was then drawn up on behalf of the East India Company. It explained that the island of St Helena belonged to the Company alone. Through its Governor and Council, the Company held courts of oyer and terminer to try criminal offences, together with civil courts. The island's population fell into three groups. Some were employed by the Company. Others were island-born descendants of English settlers who held land from the Company by lease or grant. The largest group, however, consisted of black slaves owned by the white inhabitants and put to work as servants.

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		who have obtained Leases or Grants of Land from the Company, but the greater Number of Persons are Black Slaves belonging to the White Inhabitants employed as Servants. It has been usual to admit the black Slaves to give Evidence in the Courts of Justice against each other but not to allow them to be examined as Witnesses against White People By means of this Distinction several Instances of Cruelty in White People against their Black Slaves (perhaps even Murders) have escaped unpunished by the Black Slaves not being allowed to give Evidence against them. and lately a Case happened where a White Man went and stole his Neighbor's Sheep taking his Black Servant to assist, who acted in the Business merely by the Orders and under the influence of his	The courts had long allowed black slaves to testify against one another. They had never let slaves appear as witnesses against white people. Because of this rule, a number of white owners had escaped punishment for cruelty to their slaves, and perhaps even for murdering them, since the only witnesses were slaves. A recent case had brought the problem to a head. A white man stole sheep belonging to his neighbour and made his black servant help him. The servant took part solely on the white man's orders and under his direct control. Interpretations The rule barring slaves from testifying against white people was a matter of island custom, not law. On 5 January 1781 George Rous had advised that any person with a sense of religion, sworn in the form of his own faith, could lawfully give evidence. The directors had also accepted slave oaths on 17 December 1762. Yet the courts went on excluding slave evidence against whites. The effect was that the people most exposed to violence, and often the only witnesses to it, could not speak against those who committed it. The Company's own statement of the facts admitted that this had allowed cruelty and possibly murder to go unpunished. That frankness shows the rule had become an embarrassment the Company wished to resolve. The sheep-stealing case showed the rule working in reverse. Sheep stealing was then a capital felony in England, punishable by death without benefit of clergy. The only witness to the white man's guilt was his slave, who had himself taken part under orders. The slave could perhaps be tried on the evidence of other slaves, while the white man who directed the theft could not be convicted on the one account that implicated him. The case therefore exposed how the custom could leave a subordinate facing the full weight of the law while the man responsible went free. A case in this sense was a written summary of facts and questions prepared for a barrister, who answered it with a formal opinion. Framing the problem as a case for the Company indicates that the directors intended to put the question of slave evidence to counsel directly. The island's custom was to be tested against English law. The forfeiture clause in the regulations of 2 March 1680 supplied the penalty behind the residence and stocking condition in Smith's opinion. An heir who neither lived on his land nor kept it peopled and stocked lost it to the Company. This was the mechanism through which, as Smith explained, many estates had returned to the Company's ownership.
23	18	his Master and the Theft was for the Masters use. The Evidence of the Facts was indisputable, but they could only be proved by Black Slaves, so that the Master was not prosecuted, but his Black Slave was, and upon the Evidence of other Blacks was Convicted and Condemned, but Circumstanced as the Case was he was reprieved and an Application is now before His Majesty for a Pardon The Governor and Council have differed in Opinion respecting the allowing of Black Slaves to give Evidence. See the Governors Letter Dated 28 July 1785 Qy Are Black Slaves (not professing Christianity) competent Witnesses in English Criminal Courts of Justice either against English people or against each other? and if so in what Mode should they be Sworn to speak the Truth I am of Opinion that Black Slaves	The slave had acted under his master's orders, and the sheep were stolen for the master's own use. There was no doubt about the facts, but only black slaves could prove them. As a result the master was never prosecuted. His slave was prosecuted instead, convicted on the evidence of other black slaves and sentenced to death. Given the circumstances of the case, the slave was reprieved, and a petition for his pardon was then before the King. The Governor and Council had disagreed among themselves over whether black slaves should be allowed to give evidence. The Governor's letter of 2 July 1785 set out their differences. The question put to counsel asked whether black slaves who did not profess Christianity could act as competent witnesses in English criminal courts, either against English people or against one another. If they could, counsel was asked how they should be sworn to tell the truth. Counsel's opinion was that such slaves could be competent witnesses in an English criminal court, whether the accused was English or a fellow slave.

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		(tho' not professing Christianity) might be competent Witnesses in an English Criminal Court of Justice either against English People, or against each other, provided they were found to understand the obligation of an Oath and to believe in a Supreme God. The Practice of admitting Persons of the Church of Scotland to be Sworn in a different form from that established by the general practice of English Courts, and still more that of Swearing Jews, according to their own faith, which prevails in Criminal as well as Civil Courts, goes a great way to decide the Question, and the point seems to be fully settled, by the Opinion of the Chancellor and the three Chiefs, in the Case of Omichund and Barker, where no distinction is taken between Courts	They had first to be found to understand what an oath bound them to and to believe in a supreme God. Counsel pointed to the courts' practice of letting members of the Church of Scotland take the oath in a form different from the usual English one. The practice of swearing Jews according to their own faith, followed in criminal and civil courts alike, carried the argument further still. In counsel's view the matter had been settled for good by the judgement of the Lord Chancellor and the three chief judges in the case of Omichund against Barker, which drew no distinction between one kind of court and another. Interpretations The sheep-stealing case showed the island's custom producing the very result the law was meant to prevent. The master planned the theft and took the proceeds, yet escaped prosecution because the only witnesses were slaves. His slave, who acted under compulsion, was convicted on slave evidence, which the custom allowed when the accused was also a slave. The reprieve and petition to the King followed the procedure the directors laid down on 12 January 1763, under which the Council could delay an execution but only the Crown could grant a pardon. The Company's own brief thus recorded that its courts had condemned the less guilty man and left the more guilty one untouched. Omichund against Barker, decided in 1744, was the leading English case on the oaths of non-Christian witnesses. It arose from a dispute over a debt owed to an Indian merchant, and the court had to decide whether Hindu witnesses sworn by their own religious forms could give evidence. The Lord Chancellor, sitting with the chief judges of the three common law courts, held that they could. The essence of an oath was an appeal to a God who would punish falsehood, not a particular Christian ceremony. The varied forms already accepted for Scots and Jews, cited by counsel here, served the same argument: the words and gestures of an oath could change so long as the witness believed that it bound his conscience. The test counsel applied was slightly narrower than George Rous's opinion of 5 January 1781. Rous accepted any witness who showed a sense of religion. This opinion required both an understanding of the oath's obligation and belief in a supreme God, which the court would have to establish witness by witness. That gave the island's judges a formal inquiry to conduct before admitting slave evidence, and room to exclude a slave whose beliefs they judged insufficient. The disagreement within the Governor and Council shows that the question divided the island's own rulers, not merely London and St Helena. The members of the Council were themselves drawn from, or closely tied to, the slave-owning population whose conduct the rule protected. A division among them over admitting slave evidence against whites meant the matter could not be resolved locally and had to go to London for a ruling on the law.
24	19	Courts of Civil and Criminal Jurisdiction. If this be so even within this Kingdom, much more should it prevail at St Helena, where all the Arguments of expedience, Justice and necessity apply with so much greater force It is no Objection that a different practice prevails in our West India Islands, as I conceive that arises from the local Municipal Laws of these Islands As to the Question, in what form those Witnesses should be Sworn (I mean such as are Pagans) I think enquiry should be made, what is the most usual and binding form of Oaths or appeals for truth to the Supreme Being in the Country from whence they are brought	Counsel held that the settled rule applied to civil and criminal courts alike. If that was the position within England itself, it should apply with even more force on St Helena. There, every consideration of convenience, justice and necessity weighed far more heavily. Counsel did not accept that a different practice in the British West Indian islands raised any difficulty. In his view that practice rested on the local laws each of those islands had made for itself. Counsel then turned to the form of oath for witnesses who followed no recognised religion. He advised that the court should find out which form of oath, or solemn appeal to a supreme being, was most commonly used and most binding in the country each

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		and that in that form, as near as may be they should be Sworn In Order to prevent all possibility of future doubt or disagreement in the Government and Magistrates of the Island; perhaps it might be adviseable for the East India Company (in pursuance of the power given them by the Charter of Charles the Second of making Laws for the Government of St Helena even extending to Capital Cases) to make some Laws or Orders regulating the future mode of proceeding upon the principles above stated: which I have no doubt would be good and Valid under that power, being in the very Words of the Charter "not contrary to the Laws "of England but as near as may be conformable thereto" I throw out this hint however rather from an Opinion of the Expediency than Necessity of it; as I think the Magistrates are bound to receive such Evidence as the general Law now stands (Signed) J Adair 13 January 1787	witness came from. The witness should then be sworn in that form, or as close to it as possible. To avoid any further doubt or dispute among the island's government and magistrates, counsel suggested that the East India Company might issue laws or orders setting out how such evidence should be taken in future. These would follow the principles set out in his opinion. The Company could do this under the power to legislate for St Helena that Charles II's charter had granted, a power that extended even to capital cases. Counsel had no doubt that such rules would be lawful and valid. The charter required only that the Company's laws should not conflict with English law and should follow it as closely as circumstances allowed. Counsel stressed that he offered this suggestion on grounds of convenience rather than necessity. In his judgement the magistrates were already obliged to accept such evidence under the general law as it stood. J Adair signed the opinion on 13 January 1787. Interpretations Counsel's treatment of the West Indies identified exactly why St Helena's custom lacked legal force. The Caribbean colonies had elected assemblies that passed their own slave laws, and these expressly barred slaves from giving evidence against white people. That exclusion existed because a local statute created it. St Helena had no such enactment, so the general rule of English law applied without qualification. The practice of refusing slave evidence against whites, which the Company's own brief admitted had let cruelty and perhaps murder go unpunished, had no lawful basis. That was why counsel could say the magistrates were already bound to hear such evidence. The opinion also took a notably more confident view of the Company's lawmaking power than the one given on the Council's letter of 31 May 1780. That earlier opinion doubted whether the charter of Charles II supplied a secure enough footing for justice on the island and suggested a royal charter of justice might be needed. Adair treated the same charter as ample authority for an ordinance on evidence, since such a rule would bring island practice closer to English law rather than departing from it. The requirement that Company laws follow English law as nearly as possible thus worked here as a source of authority, not merely a limit on it. Counsel's advice on oaths for witnesses of no recognised faith placed a practical burden on the island's courts. The slaves of St Helena had been brought from several distant regions, each with its own religious practices. To swear a witness properly, the court would first have to learn what solemn appeal to a higher power carried weight in that witness's homeland. The principle was the same one applied in Omichund against Barker: an oath's validity lay in its hold on the witness's conscience, not in any fixed Christian ceremony.
25	20	Our Governor and Council at St Helena. Par 1 We are always ready to give our Time and most serious attention to any material Object respecting our Island of St Helena for the purpose of establishing good Government over the Inhabitants, and promoting a regular orderly conduct on their part, but the various Matters respecting Slaves and their Masters and Mistresses noticed in your several Letters of the last Season do not appear to us, either on Account of the difficulty or Importance of the Cases to merit the serious references you have made for our Consideration 2 The Code of Laws respecting Slaves dated 24th February 1792 sent out by the Valentine we hope are so plain that very little if any	The directors wrote again to their Governor and Council on St Helena, this time about the island's slaves. 1: The directors assured the Council that they always stood ready to give time and careful thought to any significant matter concerning St Helena. Their aim was to secure good government over the islanders and to encourage steady, orderly behaviour among them. The Council's letters from the most recent shipping season, however, had raised a range of questions about slaves and their owners, male and female. The directors did not consider that any of these cases was difficult or important enough to justify the formal references the Council had made to London. 2: The directors trusted that the code of laws on slaves dated 24 February 1792 was clear enough to

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		difficulty can arise in carrying them into execution to the benefit and satisfaction both of Slaves and their Masters and Mistresses, and for future Government we think they will meet most of the Cases which have been made matters of doubt in expounding the old Laws.	cause little or no difficulty in practice. The code had gone out to the island aboard the <i>Valentine</i>. They expected it to be applied to the benefit and satisfaction of slaves and owners alike. In future it should also settle most of the questions that had caused doubt under the old laws. Interpretations The slave code of 24 February 1792 was the kind of measure George Rous and J Adair had pointed towards. On 13 January 1787 Adair advised that the Company could remove all doubt among the island's government and magistrates by issuing its own laws under the charter of Charles II. The code of 1792 did exactly that for the law of slavery. Its purpose, as the directors described it, was to replace a patchwork of old local laws, island custom and case-by-case legal opinions with a single written body of rules the Council could apply directly. The directors' impatience with the Council's references marked a change in how they expected the island to be governed. For three decades legal problems on St Helena had been sent to London, put to the Company's solicitor or counsel, and answered months or years later. Cases such as the dispute over slave evidence reported in the Governor's letter of 2 July 1785 had shown how slowly this worked. With a code in place, the directors wanted routine disputes between slaves and owners settled on the island. London would deal only with questions of real difficulty or weight. The reference to the Council's letters of the last season reflected the rhythm of correspondence with the island. Letters went home with the fleets of Company ships calling at St Helena on their voyages from the East, which arrived at particular times of year. Replies travelled back with the outward ships, such as the <i>Valentine</i>. Each season's letters therefore formed a batch, answered together in London's next dispatch.
26	21	3 We are not aware at present of any variation or addition to be made to them, except in the Cases of unmarried Female Slaves having Children which may in a degree deprive the Master or Mistress of the Service of such female Slave, and also occasion expence and a general inconvenience to the Family to which they belong. It seems necessary, or at least highly expedient that a remedy should be applied to such Cases, for which purpose we now send you a Law in addition to those of 24th February last. 4 With respect to the trivial Cases you have referred, our Answers will be very short. The 25th Article of the old slave Laws had two objects, one compulsory upon a Master to liberate a slave woman by whom he should have a Child, the other to make a satisfaction to another Proprietor of a Slave Woman in the Mode of purchasing the Freedom of such Slave, but it was not meant to compel a Person to sell who should think it more beneficial to keep the Female Slave, therefore as to the Case of Mrs Hodson we think in Strictness she was not compellable to sell her Slave Sukey. At the same time we must say that there does not seem to be even a plausible reason for her refusal under the Circumstances of her treatment of Suckey and having since turned the Woman out of Doors, you will do well to inforce the Sale as far as you can by any Law that shall be applicable	3: The directors knew of no changes or additions needed to the new code, with one exception. This concerned unmarried female slaves who had children. Such births could partly deprive an owner of the woman's work, as well as bringing expense and general disruption to the household she belonged to. The directors considered it necessary, or at least very advisable, to deal with these cases. For that purpose they sent out an additional law to supplement those of 24 February 1792. 4: The directors promised to answer the minor cases the Council had referred to them very briefly. The 25th article of the old slave laws had served two purposes. First, it required a master who fathered a child by a slave woman to set her free. Second, it provided compensation for another person's ownership of a slave woman by allowing her freedom to be bought. The article was never intended to force an owner to sell a slave woman if keeping her seemed more to the owner's advantage. On a strict reading, Mrs Hodson could not therefore be compelled to sell her slave Sukey. The directors nonetheless saw no credible reason for her refusal, given how she had treated Sukey. Mrs Hodson had since turned Sukey out of the house altogether. The directors advised the Council to push the sale through as far as any applicable law allowed. Interpretations The 25th article of the old slave laws created two routes to freedom for slave women who bore children to free men. A master who fathered a child by his own slave was obliged to free her. Where the father was not her owner, the article allowed her freedom to be purchased, which compensated the owner for losing her. The first route placed a real cost on masters who

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			took slave women as partners. The second depended on the owner's willingness to sell, and the directors confirmed that the article gave no power to force a sale. Sukey's case turned on that gap: someone evidently wished to buy her freedom, and Mrs Hodson refused. The directors' handling of Sukey's case shows them treating an owner's rights as conditional in practice, even where the law gave them in full. Mrs Hodson kept a strict legal right to refuse the sale. By turning Sukey out, however, she had stopped providing the food, shelter and clothing that ownership was supposed to carry with it, while still claiming her as property. The directors regarded that combination as indefensible. Their instruction to enforce the sale by any available law invited the Council to find another legal route to the outcome the 25th article could not compel. The directors left the choice of law to the Council, which suggests the new code of 1792 may have contained provisions against the neglect or abandonment of slaves that could serve the purpose. The new law on unmarried slave mothers was framed entirely around the owner's losses. The directors described the problem as lost labour, added cost and disruption to the household, with no mention of the woman or her child as persons with interests of their own. This reflected the basic character of slave law, in which a slave's pregnancy was treated first as a matter affecting the owner's property. The remedy itself was not described, so its provisions sat in the separate law sent out with this letter. The directors' description of the Council's referrals as trivial repeated the impatience they showed in the opening paragraphs of the letter. With the code of 24 February 1792 in force, they expected the Council to settle individual disputes such as Sukey's on the island rather than send them home.
27	22	5th The Case of Peg who had a Child by Charles Scott her Masters Son, is not provided for by the strict Letter, but is fully within the Principle of the 25th Article of the old slave Laws, and under the Circumstances of the Case we direct that Charles Scott should liberate the Woman and provide for the Child. 6th The Cases of Lamb and Mason are little details of Government too Minute for a reference. You must be perfectly competent to judge from the Conduct and Circumstances of these persons what degree of Lenity it is proper to shew them, we therefore leave these Cases wholly to yourselves. 7th We dont object to you having made free the Slave Woman who had a white Child by Craven a Garrison Man, nor to her being employed by the Company so long as her Service shall be wanted and she can earn her Allowance. 8th As it appears that Mr Benj Masons purchase of Sultan was previous to the prohibitory Law against importing Slaves, we agree that Sultan be returned to him and that a reasonable satisfaction be made for Mr Masons loss of the Mans Labour.	5: The directors turned next to the case of Peg, who had borne a child by Charles Scott, her master's son. The exact wording of the 25th article of the old slave laws did not cover her situation, but it fell squarely within the article's purpose. Taking account of the circumstances, the directors ruled that Charles Scott should set Peg free and support the child. 6: The directors regarded the cases of Lamb and Mason as minor matters of local government, far too small to be sent to London. The Council was entirely capable of deciding, from each person's conduct and circumstances, how much leniency to show them. The directors therefore left both cases wholly to the Council's judgement. 7: The directors raised no objection to the Council's decision to free the slave woman who had borne a white child to Craven, a soldier of the garrison. Nor did they object to the Company employing her, for as long as it needed her work and she could earn her keep. 8: Mr Benjamin Mason had evidently bought Sultan before the law banning the import of slaves came into force. The directors therefore agreed that Sultan should be returned to him. Mason was also to receive fair compensation for the work he had lost while Sultan was out of his hands. Interpretations The ruling on Peg shows the directors extending the old 25th article beyond its wording to reach the members of a master's household. The article bound a master who fathered a child by his own slave. Charles Scott was not Peg's owner but his son, so a strict reading would have left her unprotected. The directors held that the article's purpose covered him, and they went further than the article itself by requiring him to support the child as well as secure the mother's freedom. Since Charles Scott did not own Peg, the

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			order in practice placed the cost of her freedom on the Scott family. The case of Sultan turned on the principle that a new law does not reach back to transactions completed before it existed. The ban on importing slaves, probably part of the code of 24 February 1792, had evidently been used to take Sultan from Mason. Because Mason bought him lawfully before the ban, the directors restored him and compensated Mason for the lost labour. The ruling protected owners' property against retrospective application of the island's new restrictions, even as those restrictions tightened the slave trade into St Helena. The freeing of the woman who bore Craven's child followed the same logic as the 25th article, applied this time to a soldier of the garrison rather than a master. The conditions attached to her employment reveal the practical concern behind manumission on the island. A freed slave lost the owner's duty to feed and clothe her, and without work she risked becoming a charge on the Company. Employing her only while her labour was needed and while she earned her allowance, the ration and pay given to Company workers, ensured that her freedom cost the Company nothing.
28	23	9 Your Proceedings respecting the very Cruel behaviour of Mr Bagley towards Andrew a free Black and also of Mr Lambe in refusing to pay a Debt to him, meet our entire Approbation as far as they go, but as the Piece of Land enjoyed by Andrew for a long course of Years seems to have been promised him for his Life in consideration of his Services, the faithfulness of which are not denied, we think that you should require it to be restored to the poor Man. 10 An Allowance to sell Slaves to be carried from the Island might be introductive of a foreign Commerce in Slaves at St Helena, which ought not to be allowed, nor should a Transportation or Banishment of Slaves be permitted (if at all) otherwise than by legal Sentence for a Crime, you therefore did right in preventing Lieutt Desfountains Sale of Sukey and more especially under the Circumstances stated concerning her, which highly aggravate the Impropriety of the Transaction. 11 A Doubt seems to be entertained respecting the Obligation of Owners of Slaves to maintain them on Sundays, when not employed in their Masters Services. By freeing Slaves from Labour on Sundays we did not mean to deprive them of Sustenance from their Masters, if Slaves were not to be fed on Sundays by their Owners, many of them would probably be driven to indirect Means for	9: The directors fully approved of the steps the Council had taken over Mr Bagley's very cruel treatment of Andrew, a free black man. They equally approved of its action against Mr Lambe for refusing to pay a debt he owed Andrew. They felt, however, that the Council had not gone far enough. Andrew had worked a plot of land for many years, and it appeared to have been promised to him for life in return for his services. Nobody disputed that he had served faithfully. The directors therefore wanted the Council to order that the land be given back to him. 10: Allowing owners to sell slaves for removal from the island risked opening a foreign trade in slaves at St Helena, which the directors would not permit. No slave was to be shipped off the island or banished, if at all, except by lawful sentence for a crime. The Council had therefore acted correctly in stopping Lieutenant Desfountain from selling Sukey. The circumstances reported about her made the proposed sale all the more improper. 11: The Council was apparently unsure whether owners had to feed their slaves on Sundays, when the slaves did no work for them. In releasing slaves from Sunday labour, the directors had never intended to cut them off from the food their owners provided. Interpretations The ruling on selling slaves off the island treated removal from St Helena as a punishment that only a court could impose. An owner who shipped a slave away separated that person from family and community permanently. The directors held that this could follow only from a lawful conviction, not from an owner's private decision. Combined with the ban on imports applied in Sultan's case, the rule closed St Helena to the slave trade in both directions. The slave population could now change only through births, deaths and manumission. This matched the direction of opinion in Britain, where the House of Commons had voted in 1792 for the gradual abolition of the slave trade. The question over Sunday rations exposed how owners tried to turn a protection into a saving. The code of 24 February 1792 evidently freed slaves from work on Sundays. Some owners seem to have argued that a slave who did no work that day had no claim to be fed. The directors rejected this reading. Their answer showed that they understood the owner's duty to maintain slaves as continuous, arising from ownership itself rather than being paid in exchange for each day's labour.

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			The case of Andrew shows the directors protecting a free black man's claim to land against white islanders. His plot rested on a promise of use for life in return for faithful service, which was probably informal rather than a sealed grant of the kind John Smith's opinion described. The directors nonetheless treated the promise as binding and ordered the land restored. The Mr Bagley who mistreated Andrew was perhaps the Orlando Bagley whose slave Yon was named as a witness in George Rous's opinion of 5 January 1781.
29	24	for support and in all Cases they would be under a necessity of resorting to Labour, and be thereby deprived and prevented from receiving that religious Instruction provided by the last Code of Laws. 12th From what you write respecting the Conduct of Juries, there is too much reason to fear that a prejudice prevails unfavourable to the Blacks, but it is highly improper that a Jury should be called upon to revise a Verdict after it has been received and recorded, nor is it competent to the Court to vary the Verdict of a Jury, otherwise than by the Constitutional Mode of respiting Judgment, and recommending the Party Home for Mercy, which at the same time that it affords Relief to the injured in every Case that merits such Consideration exposes whatever may be improper in the Conduct of a Jury and lays them open to Censure. 13 We have attended to your recommendation in favour of the Clerk of the Peace and also to his Petition entered on Consultation of the 14th June last stating that an extraordinary increase of Trouble is likely to ensue in his Department of Clerk of the Peace for which he prays both an Increase of Salary and the Establishment of a Table of Fees. It is highly proper that every Officer should have a due recompence for the Discharge of the Duties of	Without food from their owners on Sundays, many slaves would probably turn to dishonest means of supporting themselves. In every case they would be forced to work that day to feed themselves. That work would cut them off from the religious teaching the latest code of laws had arranged for them. 12: The Council's report on the conduct of juries gave the directors good reason to fear that prejudice against black islanders was widespread. Even so, asking a jury to reconsider its verdict once the court had accepted and recorded it was entirely improper. The court itself also had no power to alter a jury's verdict. The only proper course was to postpone judgement and recommend the convicted person to the authorities in England for mercy. That procedure gave relief to anyone wrongly treated in a case deserving it. It also brought any misconduct by the jury into the open and left the jurors exposed to criticism. 13: The directors had considered the Council's recommendation in favour of the clerk of the peace. They had also read his petition, recorded in the Council's minutes of 14 June, which warned that the work of his office was set to grow very sharply. He asked both for a higher salary and for a fixed scale of fees. The directors agreed that every officer ought to receive fair payment for the work he did. Interpretations The directors' ruling on verdicts shows the limits of jury trial as a protection for black islanders. The insistence on juries dated back to the directors' letter of 3 February 1762, but juries on St Helena were drawn from the white population. Once a verdict was recorded, neither the jury nor the court could change it. The only remedy the directors allowed was a postponed judgement and a recommendation to the Crown for mercy, and that could only help someone who had been convicted. An unjust acquittal, such as a white man cleared of cruelty to a slave, could not be corrected at all. The directors' remedy therefore protected a black defendant wrongly convicted, but did nothing for a black victim whose attacker walked free. Referring a case home for mercy served a second purpose the directors made explicit. A recommendation to the Crown required a full account of the trial to be sent to England. Any prejudice shown by the jury would thus come before the authorities in London and could be censured there. On a small island where the jurors, the accused and the Council members all knew one another, this external scrutiny was the only pressure the directors could bring to bear on the conduct of local juries. The argument about Sunday rations shows how the code's provisions depended on one another. The code freed slaves from their owners' work on Sundays so that they could receive religious instruction. If owners stopped feeding them that day, slaves would have to spend Sunday working for their own food, and the day of rest and teaching would disappear. The duty to feed slaves on Sundays was therefore what made the religious provisions of the code workable.

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			The clerk of the peace's petition reflected the extra legal business the new slave code was expected to generate. The office dated from the directors' order of 17 December 1762, and a scale of fees for it had been agreed in the Council's minutes of 4 July 1763. A new body of law governing manumission, maintenance and the treatment of slaves meant more cases, more records and more documents for the clerk to prepare.
30	25	of his Station. from what you write we have no Doubt of Mr Dovetons Merits and that his present Salary is inadequate to the additional trouble he will have, but without Information from you it is impossible for us to judge what additional Salary ought to be allowed to him, much less can we make out or establish a Table of Fees. This Consideration therefore must necessarily be postponed till you give us an Idea of the Nature and quantity of the increased business, and the amount and Mode of the recompense it may require London We are the 20 Decr 1792 Your loving Friends Wm Elphinstone Stepn Williams Wm Bensley Jacob Bosanquet R Thornton Battle W Ewer F Baring J Smith Burges Jn Townson Thos Cheap John Travers John Roberts Thos T Metcalfe Hugh Inglis	Every officer deserved fair payment for carrying out the duties of his post. From the Council's report the directors had no doubt of Mr Doveton's merits. They accepted that his existing salary would not cover the extra work that lay ahead of him. Without further details from the Council, however, they could not decide how much more he should be paid. Still less could they draw up or approve a scale of fees. The matter would therefore have to wait until the Council described the kind and volume of the additional work. The Council was also to say how much payment it would require and in what form. The directors wrote from London on 20 December 1792, and the following signed the letter: F Baring W Elphinstone Stephen Williams William Bensley Jacob Bosanquet R Thornton [...] W Ewer J Smith Burges John Townson Thomas Cheap John Travers John Roberts Thomas T Metcalfe Hugh Inglis Interpretations The clerk of the peace was paid through a mix of salary and fees, and the directors treated the two as parts of a single reward to be set together. A fixed salary gave the officer a secure income, while fees tied his earnings to the business he actually handled and passed part of the cost of justice to those who used the courts. Deciding the balance required knowing how much new work the slave code would create and who would generate it. The directors therefore declined to fix either element until the Council supplied figures. As with the gaoler's fees on 16 November 1763, they would not approve charges on the island's inhabitants without first seeing their basis. The date of the letter fixes the sequence of events. The code of laws on slaves dated 24 February 1792 reached the island aboard the <i>Valentine</i>. Doveton's petition was recorded in the Council's minutes of 14 June 1792, when the work the code would bring was already in view. The directors' reply of 20 December 1792 answered the whole of the previous season's correspondence. Francis Baring, whose name heads the signatures, was then chairman of the Company.
31	26	Blank page	
32	27	The papers of which the annexed are Copies were transmitted from St Helena for the Opinion of the Court of Directors of the East India Company. Upon inspection of such Laws and constitutions as the Company have relating to St Helena it does not appear that there is any thing that can be applicable to the present case or any ways appears whether by the Custom of the Island Leasehold Lands are or are not deemed Real Estate nor do the Company know any thing	The papers copied and attached to this case had been sent from St Helena so that the Company's Court of Directors could give an opinion on them. The Company had examined the laws and regulations it held for St Helena. None of them seemed to bear on the present case. Nor did they show whether, by the island's custom, leasehold land counted as real property. The Company knew nothing about the case beyond what appeared in the attached papers. The question put to counsel asked for his written opinion on the case, to guide the Governor and

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		of the case otherwise than by the papers annexed. Q You are desired to write your opinion upon the case for the information of the Governor and Council at St Helena that they may determine upon the matter in question between the parties according to Law and justice, and as you apprehend a court of Equity here would do.	Council at St Helena. They were to settle the dispute between the parties according to law and justice. Counsel was also asked to indicate how he believed an English court of equity would decide the matter. Interpretations The request to decide the case as an English court of equity would shows how the island's single court covered jurisdictions that England kept apart. In England the common law courts applied strict legal rules, while the Court of Chancery decided cases according to fairness and conscience. Chancery dealt with matters such as trusts, the administration of estates and disputes where the strict law produced an unjust result. St Helena had no separate court of equity, so the Governor and Council had to act as both. Asking counsel how Chancery would rule gave them a model for exercising that second jurisdiction. The question whether leasehold land counted as real property went to the heart of inheritance on the island. English law treated a lease as personal property, passing to executors, while real property went to the heir. A local custom could vary that rule, and some English districts had their own customs of this kind. The Company's admission that its records said nothing either way repeated the problem John Smith had met in Captain Richard Beale's case. Once again the papers could not establish what kind of holding was in dispute, and the Company itself could not supply the missing law.
33	28	Copies of the papers which were Annexed to the above were as follows Vizt Extracts from the St Helena General letter dated 9th of August 1753 Paragraphs 4 5 6 7 8 9 10. 11 & 12 Copy of the will of Gabriel Harper as enter'd in the consultations 22nd March 1747 and Extracts from the St Helena Consultations dated 25th June 2nd and 9th of July 1753 with Copies of the several papers therein mentioned.	The papers attached to the case consisted of the following: Extracts from the St Helena general letter of 9 August 1753, paragraphs 4, 5, 6, 7, 8, 9, 10, 11 and 12 A copy of the will of Gabriel Harper, as recorded in the Council's minutes of 22 March 1748 Extracts from the St Helena Council's minutes of 25 June, 2 July and 9 July 1753, together with copies of the various papers referred to in them Interpretations The recording of Gabriel Harper's will in the Council's minutes shows the Council acting as the island's probate authority. In England wills were proved in the church courts, which kept the official copy and granted executors their authority to act. St Helena had no such court, so the Council itself received and entered wills in its own records. Those minutes became the only authoritative text of a will on the island. That was why a copy drawn from them had to accompany any legal question about the estate. The dates of the enclosures place this dispute in 1753, almost a decade before the directors' reforms of the island's courts began on 3 February 1762. The question about leasehold land and the request for guidance on how an English court of equity would rule therefore came from a period when the Council still decided cases in its own customary way. The papers were arranged in this volume by subject rather than strictly by date, gathering the island's legal opinions together as a working reference.
34	29	The facts on which this case arises, seems not very perfectly stated, but in substance it is this; that Mr G (the Second husband of Mrs Bridget Harper widow of the testator Gabriel Harper) has set up a claim to one third of Gabriel Harper's leasehold Estate, in right of a third given to her by the will out of the personal Estate of her first Husband. And this against the children of Gabriel Harper. 1 The first question is, whether leasehold lands are personal Estate, in the Island of St Helena, for if they be real Estate, Mr Goodwins claim is at an end. It is said	Counsel observed that the facts behind the case had been set out rather imperfectly, but their substance was clear. Mrs Bridget Harper was the widow of Gabriel Harper, who had made the will in question. She later married Mr Goodwin. Gabriel Harper's will left her a third of his personal property. Goodwin now claimed a third of Gabriel Harper's leasehold land on the strength of that bequest. His claim was made against Gabriel Harper's children. 1: The first question was whether leasehold land on St Helena counted as personal property. If it was real property instead, Goodwin's claim failed entirely. The Governor and Council's letter of 9 August 1753 stated that leasehold was generally regarded on the island as

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		in the letter of the Governor and Council 9th August 1753, that leasehold is generally deemed real Estate but I do not observe, that there is any Law, custom, or constitution of the Island to warrant this notion and make it real Estate that is descendable in the same course and to the same heirs with freehold lands liable to the same debts or obligations, and alienable by the same convey-	real property. Counsel, however, could find no island law, custom or regulation to support that view. Nothing he had seen made leasehold descend to the same heirs by the same line as freehold land, answer for the same debts and obligations, or pass by the same forms of transfer. Interpretations Goodwin's claim rested on the English rule of coverture, under which a married woman's personal property passed into her husband's control. The third of Gabriel Harper's personal estate left to Bridget therefore became Goodwin's to claim when he married her. If leasehold land was personal property, it formed part of the estate from which her third was drawn, and Goodwin could take a share of it. If it was real property, it went to Gabriel Harper's heirs, his children, and lay outside the widow's bequest altogether. The classification of leasehold decided whether the land stayed with Harper's children or passed in part to their mother's new husband. Counsel set out the tests by which land counted as real property: the order of inheritance, liability for debts and the method of transfer. Freehold descended to the heir, answered for certain debts differently from personal property, and passed by formal conveyance. The Governor and Council asserted a general island opinion that leasehold was real property, but counsel treated a mere opinion as insufficient. To change the legal nature of a lease, a custom had to be shown to operate on all three points. The same gap in the island's records later confronted John Smith in Captain Richard Beale's case.
35	30	=ances and therefore St Helena being an English Settlement, it is safest to adhere to the law of England; which considers it as personal Estate and I do not see any general inconvenience that can arise from the Mothers receiving one third, whilst the children take the other two thirds 2 But the leasehold should be held personal Estate; the next question is whether under the circumstances of this case, Richard Goodwin is entitled to one third of Gabriel Harpers leasehold Estate in right of his wife. It is plain, that Gabriel Harper could not deprive her of any legal provision in nature of Dower, to which she had a right by any reckond usage or law of the Island; but he might limit his own bounty by will, upon such terms as he thought fit, and to continue only during her Widowhood. It is likewise plain, that she made her election before the Governor and Council whilst a widow to take a moiety of the Freehold and leasehold land under the will rather than	Counsel concluded that, because St Helena was an English settlement, the safest course was to follow English law, which treated leasehold as personal property. He could see no general harm in the mother receiving a third of it while the children took the remaining two thirds. 2: If leasehold was indeed personal property, the next question was whether Richard Goodwin could claim a third of Gabriel Harper's leasehold land through his wife. Counsel held it plain that Gabriel Harper could not strip his widow of any provision akin to dower to which island custom or law entitled her. He was free, however, to set his own conditions on anything he chose to leave her beyond that. In particular, he could make a bequest last only for as long as she remained a widow. It was equally clear that Bridget, while still a widow, had formally chosen before the Governor and Council to take half of the freehold and leasehold land under the will. Interpretations Counsel's distinction between dower and a bequest was the decisive point for Goodwin's claim. Dower was a widow's legal right to a life interest in part of her husband's land, and no will could take it away. Anything a husband left his wife beyond that was a gift, and he could attach whatever conditions he liked. A common condition limited a bequest to the period of widowhood. Such a clause prevented a wife's inheritance from passing, through the rule of coverture, to a second husband who had no tie to the first husband's children. If Gabriel Harper's will contained such a limit, Bridget's remarriage would have ended her interest, and Goodwin could claim nothing through her. Bridget's formal choice before the Governor and Council was an election, a doctrine under which a widow offered a benefit by will had to choose between it and her legal rights. She could not take both. By accepting half the land under the will, she bound herself to all its terms, including any limit to her widowhood. The Council's role in recording that choice shows it again acting as a court of estates, as it

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			did in entering Gabriel Harper's will in its minutes of 22 March 1748. Counsel's remark that a third for the mother and two thirds for the children caused no general harm echoed the English rules for dividing the personal property of a man who died without a will. Those rules gave the widow one third and the children the remainder. Treating leasehold as personal property thus produced a familiar and accepted split within the family. A Richard Goodwin was also the claimant in the dispute over Captain Richard Beale's estate considered by John Smith after the Council's letter of 25 October 1779. He was perhaps the same man, pursuing a second inheritance claim over a quarter of a century later.
36	31	a moiety of the Freehold only, according to the custom the former being more beneficial to her than her legal provision. After her second marriage the benefit of that election ceased and determined by force of the words and limitation in the will: and she became entitled only to a moiety of the freehold; having at the same time a right to one third of the personal Estate; which third is given to her absolutely not affected by her widowhood or second marriage during the widowhood the legatees of the the personal Estate (of whom the widow herself is one) were entitled only to a Reversionary interest in that moiety whilst she had the immediate profits upon the death or second marriage of the widow (which last event has happened) that moiety must come immediately into possession amongst all the legatees (the widow I say being one) to be divided with the other moiety and the rest of the personal Estate. The consequence of this is that the second husband is entitled to a third of the leasehold	Bridget had preferred this to the alternative of taking only half of the freehold land under island custom, since the will gave her more than her legal entitlement. Once she remarried, however, the wording of the will ended the benefit of that choice. From then on she was entitled only to half of the freehold. At the same time she kept her right to a third of the personal property. That third had been left to her outright, and neither her widowhood nor her remarriage affected it. While Bridget remained a widow, she received the income from her half of the leasehold land immediately. The legatees of the personal property, among whom she was one, held only a right to that half once her interest ended. Her interest was to end on her death or remarriage, and she had since remarried. That half of the leasehold therefore passed at once into the hands of all the legatees, Bridget included, as counsel stressed. It was to be shared out together with the other half and the rest of the personal property. As a result, her second husband was entitled to a third of the leasehold land. Interpretations The widow's alternative under island custom was half of her husband's freehold. This was more generous than English dower, which gave a widow a life interest in only a third of her husband's freehold land. The custom shows St Helena developing its own rule of family property, perhaps to secure widows on an island where land was the main source of support. Even so, Bridget judged the will's terms better still, since they gave her half of the leasehold as well as the freehold. The outcome shows how the widowhood clause in Gabriel Harper's will protected his children only in part. It cut off Bridget's half share of the leasehold on remarriage and returned it to the common pool of personal property. Her absolute bequest of a third of that property, however, was untouched. Once the leasehold was treated as personal property and merged into the pool, her third reached it. Under coverture that third passed to Goodwin, so the new husband gained a share in land Gabriel Harper had evidently meant to keep for his own family. A reversionary interest was a right to property that would come into possession only when an earlier interest ended. During Bridget's widowhood the legatees owned the future of her half of the leasehold but could not enjoy it. Her remarriage ended her interest, and their rights took immediate effect. Because she was herself one of those legatees, she recovered through the general division part of what she had just lost under the widowhood clause.
37	32	because such third belongs to the wife being included in the fund of the personal Estate. Indeed if she and her husband Mr Goodwin have actually enjoyed a moiety of the leasehold since the time of the second	Goodwin's claim to a third of the leasehold rested on his wife's right, since that third belonged to Bridget as part of the pool of personal property. Start of crossed out section

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		marriage I think Justice requires [...] that Goodwin should account to the Estate of Gabriel Harper so much as he has received above the profits of a third of the leasehold from that time; or that it be deducted in the value of such third (to which he appears to be entitled in right of his wife) November 27 1753 C Yorke Margin Notes: Exd	[...] End of crossed out section If Bridget and Goodwin had in fact taken the income from half of the leasehold since their marriage, counsel held that justice required Goodwin to make good the excess. He should repay to Gabriel Harper's estate whatever he had received beyond the income of a third of the leasehold from the date of the marriage. Alternatively, that excess could be deducted from the value of the third to which he appeared entitled through his wife. C Yorke signed the opinion on 27 November 1753, and the copy was marked as checked against the original. Interpretations Counsel's remedy was the kind of accounting a court of equity would order, answering the Company's request to decide the case as such a court would. Bridget's half share of the leasehold ended when she remarried, yet the couple had apparently gone on drawing the income from the whole half. Counsel did not treat this as a wrong to be punished. He required only that the surplus above their rightful third be returned to Gabriel Harper's estate, either by repayment or by setting it against Goodwin's own share. The children thus recovered what they had lost without Goodwin forfeiting the third he was lawfully owed. The signature was probably that of Charles Yorke, son of the Lord Chancellor Lord Hardwicke, who had presided over Omichund against Barker. Yorke was then a rising barrister retained by the East India Company, and he later became Solicitor General and, briefly, Lord Chancellor himself. An opinion from a lawyer of his standing gave the Governor and Council authoritative guidance on a question of family property that their own records could not settle.
38	33	Copy Opinion of the Company's Solicitor on the case of Sarah Harry. By the Law letter from St Helena dated May 1797 Paragraph 81 and papers apended. It appears that Julia Fabuans devised a certain house and Slave to on Tellan for her life and then to her son Billy his heirs and assigns for ever, Billy appears to have been bast born to have survived the Testator, and to have died in his Mothers life time intestate and without issue and therefore his reversion of interest in the house escheated to the Company as Lords of the Island they may either avail themselves of the escheat for their own use or grant it to whom they please. In this country I believe it is usual for the Crown to grant a moiety or some considerable proportion of an escheated Estate to whoever shall first give information of the escheat without any reference to the kindred of the person last seized and dying without Heirs. In so small an Island and limited Society as St Helena this does not seem to be the same policy in rewarding the first informer	The Company's solicitor gave a written opinion on the case of Sarah Harvey. The case arose from a paragraph of the Council's law letter from St Helena of May 1797 and the papers attached to it. These showed that John Fabiano had left a house and a slave by will to a woman named Tellan for her lifetime. On her death they were to pass to her son Billy and to his heirs and successors for ever. Billy had apparently been born outside marriage. He outlived the testator but died during his mother's lifetime, leaving no will and no children. His future interest in the house had therefore passed by escheat to the Company as lords of the island. The Company could either keep the escheated property for its own use or grant it to anyone it chose. In England, the solicitor understood, the Crown usually granted half or some other large share of an escheated estate to whoever first reported the escheat. This was done without regard to the relatives of the last holder who had died without heirs. On an island as small as St Helena, with so limited a community, the solicitor saw less reason to reward the first informer in the same way. Interpretations The escheat turned on Billy's birth outside marriage. English law treated an illegitimate child as having no legal relatives by blood, so he could inherit from no one by descent and no one could inherit from him except his own children. Billy died without a will and without children. His mother, although living, could not take his interest as his heir. The land therefore reverted to the lord from whom it was held. John Smith's opinion on Captain Richard Beale's estate had already established that the Company held St Helena as chief lord of all granted land. The escheat was the practical consequence of that feudal position: property left without a lawful heir returned to the Company.

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			The English practice of rewarding informers arose because the Crown had no ready means of learning when an estate lacked heirs. Offering the first informer a large share of the property gave private individuals a strong reason to search out and report such cases. The reward was paid regardless of any claims the dead man's relatives might have had in fairness, as with Billy's mother. The solicitor's doubt about applying the practice on St Helena reflected the island's size: in so small a community, an escheat was unlikely to go unnoticed. The reference to a law letter shows the directors' instruction of 3 February 1762 still in force more than 30 years later. The Council was sending its legal business home in a separate series of letters, distinct from its general correspondence on trade and administration.
39	34	I know not whether any rule has been adopted at St Helena upon occasion of escheat to the Company if there has it will be better to adhere to it if there has not the Company will probably think it advisable to regrant, the escheated Estate to some Inhabitant of the Island and if so the pretensions of the Persons to whom they grant it shall be made may be estimated by their relation to the former owner. In the present case those of Sarah Harry and William Julio appears to be nearly equal the former is the Sister of Bettys Mother and as it is now intended by Betty to have been his desire had he made a will. The latter appears to be the Natural Son of Julia Fabuans the Testator and original owner of the Estate, perhaps therefore their claims should in some degree be decided by their necessities and it may turn out that it would be prudent to grant the House to which one of them it will be most useful upon condition that the Grantee shall make some compensation to the other Margin Notes: [...]	The solicitor did not know whether St Helena had adopted any fixed rule for property escheated to the Company. If it had, he advised following it. If not, he expected the Company would probably choose to regrant the escheated estate to someone living on the island. In that case, the strength of each person's claim to the grant could be judged by their relationship to the previous owner. Here the claims of Sarah Harvey and William Julio seemed roughly equal. Sarah was the sister of Billy's mother, and Billy had reportedly intended to leave her the property had he made a will. William appeared to be the illegitimate son of Julio Fabiano, who made the original will and first owned the estate. The solicitor therefore suggested that their respective needs might partly decide between them. The Company might find it wisest to grant the house to whichever of the two would benefit from it most. The grant could carry a condition that the recipient pay some compensation to the other. Interpretations Neither claimant had any legal right to the house. Sarah was Billy's aunt, but because Billy was illegitimate the law recognised no blood relationship through which she could inherit from him. His intention to leave her the property counted for nothing, since he never made a will. William was the natural son of Julio Fabiano, and as such he too was a stranger in law to his father's estate. The escheat, however, placed the property at the Company's free disposal. That discretion allowed the Company to weigh family ties and personal need that the strict law of inheritance ignored. The solicitor's approach departed from the English practice he described in the first part of his opinion, under which the Crown rewarded whoever first reported an escheat and disregarded the last owner's relatives. Instead he treated the escheat as an opportunity to settle the property fairly within the dead man's family circle. Regranting to an islander also served the Company's long-standing interest in keeping land occupied and in use, the same concern behind the residence and stocking condition enforced by the regulations of 2 March 1680. A grant made on condition of compensation allowed the Company to divide the benefit of a single house between two claimants. The one who most needed a home would receive it, and the other would receive a payment in recognition of an equal claim. The arrangement suited a small island where property was scarce and where both claimants would go on living in the same community.
40	35	If there are any other persons who were relations of Julia Fabuans or Betty I think their claims should be considered. Henry Smith	The solicitor added that the claims of any other relatives of Julio Fabiano or Billy should also be taken into account. Henry Smith signed the opinion on 3 May 1798.

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		3 May 1798 Copy, the Solicitors opinion relative to the Estate of the late Mr Orlando Bagley requested in the 16th paragraph of the General letter of 19th December 1799 The Debts must be paid out of the personal Estate, and if that is not sufficient, then if there is any Bonds or Specialty Debts, they or so much of them as the personal Estate is insufficient to pay must be raised out of the real Estate, but if there are no Specialty Debts the real Estate is not liable to any payment and subject to the Debts in manner above mentioned, the eldest Brother of the whole blood take	A copy followed of the solicitor's opinion on the estate of the late Mr Orlando Bagley. The Council had requested it in the 16th paragraph of its general letter of 19 December 1799[...]. The solicitor advised that Bagley's debts had to be paid first from his personal property. If that proved insufficient, any debts secured by bond or other sealed instrument were to be met from his real property, to the extent the personal property fell short. If there were no debts of that kind, the real property was not liable for any payment at all. Interpretations The solicitor's advice rested on a distinction in English law between two classes of debt. A specialty debt was one recorded in a sealed document, such as a bond, in which the debtor usually bound his heirs as well as himself. An ordinary debt, arising from an unsealed contract or an unpaid account, bound only the debtor's personal property. When a man died, his land passed directly to his heir and could be reached only by creditors holding specialty debts. Ordinary creditors had to be content with whatever the personal property yielded, even if the heir inherited valuable land. English law did not make land generally liable for all a dead man's debts until 1833, so the rule the solicitor applied to Bagley's estate left some creditors exposed to loss. The estate was that of the Orlando Bagley whose slave Yon was named as a witness in George Rous's opinion of 5 January 1781. He was perhaps also the Mr Bagley whose cruelty to Andrew, a free black man, drew the directors' comment on 20 December 1792. His estate evidently included both land and personal property, and his debts were large enough for their payment to raise a question of law.
41	36	will be entitled to the real Estate the residue of the personal Estate after payment of the Debts must be divided into nine parts and be distributed equally amongst the Brothers and sisters both of the whole and half blood and the children of such as are Dead the Children taking to be equally divided amongst them the Share that their respective parents would have been entitled to had they been living. H Smith Solicitors opinion of the will of Captain Alexander and Sergeant Hammond I have perused the papers referred to me relative to the will of Captain J Alexander late of St Helena on which the Governor and Council of that Island by their letter 10th July 1811 desire advice as to its validity and whether it ought to have been established. It appears to have been doubted whether the will was valid because	Bagley's eldest brother of the full blood would inherit his real property. Once the debts were paid, the rest of the personal property was to be split into nine equal shares. These would go to Bagley's brothers and sisters, whether of the full or the half blood, and to the children of any who had died. Each set of children would divide equally among themselves the share their parent would have received if still alive. H Smith signed the opinion. The solicitor then gave his opinion on the wills of Captain Alexander and Sergeant Hammond. The solicitor had examined the papers sent to him concerning the will of Captain J Alexander, formerly of St Helena. In their letter of 10 July 1811 the Governor and Council had asked whether the will was valid and whether it should have been upheld. Doubts had arisen over its validity. Interpretations The division of Bagley's estate shows English law treating land and personal property by entirely different rules. Land descended to a single heir, and in this period a relative of the half blood, sharing only one parent, could not inherit land at all. The eldest full brother therefore took the whole of Bagley's real property. Personal property, by contrast, was shared under the rules for those who died without a will. These treated full and half siblings alike and let the children of a dead sibling take their parent's share between them. The result was that a single brother received all the land while the personal property was spread across nine family branches. The pattern of inheritance also shows that Bagley evidently died without a wife or children, since his siblings would otherwise have been excluded.
42	37	it was signed by the testators mark instead of with his Name in his own writing, and because there was no impression of a seal and because a report had been in circulation that the deceased had been	The doubts about Captain Alexander's will arose on three grounds. He had signed it with a mark rather than writing his own name. The document carried no

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		in a state of delirium on the day the will was witnessed. The will appears to have been attested by three witnesses, two of whom were examined as well as a Dr Trout who was present tho he did not attest it, they all speak to the extreme bodily weakness of the Testator and his inability from want of strength to write his Name but they also speak to his perfect knowledge of what he was about at the time when he executed the will tho' at times when dozing he had spoken incoherently in the course of the day. a Dr Baildon was also examined who was not present, when the will was executed but who attended him three times on the day when it was executed and who said that he was of opinion that it was highly improbable that	impression of a seal. A rumour had also spread that he had been delirious on the day the will was witnessed. Three witnesses had apparently attested the will, and two of them had been questioned. Dr Crout, who was present at the signing but did not attest it, was questioned as well. All of them described the testator's severe physical weakness and confirmed that he lacked the strength to write his name. They also agreed, however, that he fully understood what he was doing when he executed the will. During the day he had sometimes spoken incoherently while drifting in and out of sleep. Dr Baildon was also questioned. He had not been present at the signing, but he had visited the testator three times on the day the will was made. Interpretations The objections to the will's form were weaker than they appeared. English law required a will of land to be signed by the testator and attested by witnesses, and a mark made by someone too weak to write satisfied the requirement of a signature. Three witnesses met the number the statute demanded. No seal was needed at all for a valid will. The first two grounds of doubt therefore had little legal force. The real question was the third: whether Captain Alexander had the mental capacity to make a will. The test of capacity was whether the testator understood what he was doing and what property he was disposing of at the moment he signed. Periods of confusion earlier or later in the day did not by themselves invalidate a will made during a clear interval. The attesting witnesses and Dr Crout spoke to his clarity at the time of signing, which carried great weight because they were present. Dr Baildon had seen the testator on the same day but not at the signing. His evidence could therefore only suggest the testator's general condition, not his state of mind at the moment that mattered in law. The Council's question whether the will ought to have been upheld shows it still acting as the island's court of probate, as it did when it entered Gabriel Harper's will in its minutes of 22 March 1748. Establishing a will gave the executors authority to deal with the estate. A doubt over validity therefore left the whole estate unsettled until London's advice arrived.
43	38	that he could have had a lucid interval during that day It does not appear why the third witness to the will was not examined nor why a Mr Beale who is stated to have transcribed it for the testator was not examined. The contents of the will are simply the bequest of all the Testators property to his widow for [...] during her widowhood and at her Death to be [...] for the benefit of his children in case of her marriage it was to be divided in the proportion of one third to his wife and the remainder to his Children equally. There is nothing upon the face of the will to induce a suspicion of the sanity of the [...] testator or of any corrupt influence or imposition being practised upon him. he sufficiently authenticated it by declaring it to have been his will and putting his mark to it in the presence of witnesses against whose credit there is not a slur. and the opinion of a person who was [...] present when he published the will that it was improbable that he should have had a lucid in-	Dr Baildon considered it highly unlikely that the testator could have had a clear interval at any point that day. The papers did not explain why the third attesting witness had not been questioned. Nor did they explain why no evidence had been taken from Mr Beale, who was said to have written out the will for the testator. The will itself was simple. It left all Captain Alexander's property to his widow for as long as she remained unmarried. On her death it was to be held for the benefit of the children. If she remarried, the property was to be split, with a third going to her and the rest shared equally among the children. Nothing in the document itself gave any reason to doubt the testator's sanity or to suspect that anyone had improperly influenced or deceived him. He had adequately confirmed the will by declaring it to be his own and making his mark on it in front of witnesses. No accusation had been made against the credibility of those witnesses. Interpretations The solicitor treated the content of the will as evidence of the testator's state of mind. A will that made a natural and sensible provision for a wife and children was consistent with a sound understanding. A delirious man, or one under another's control, might be expected to produce an erratic or surprising disposition. Alexander's will did the reverse, following exactly the pattern a careful husband and father would choose. Its reasonableness therefore strengthened the

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			evidence of the witnesses present at the signing against the doctor's general doubts. The provision for the widow followed the same design as Gabriel Harper's will, examined in Charles Yorke's opinion of 27 November 1753. The widow enjoyed the whole estate while she stayed unmarried, but remarriage reduced her share to a third, with the rest passing to the children. The purpose was to stop a second husband gaining control of the first husband's property through the rule of coverture. The recurrence of the arrangement across nearly 60 years suggests it was a common way of protecting children in St Helena's families. Declaring a document to be one's will before witnesses was known as publication, and it formed part of the ceremony of making a valid will. By declaring the document his own and marking it in their presence, Alexander gave the witnesses direct knowledge of his intention. The solicitor's note on the uncalled witnesses pointed to gaps in the Council's inquiry. Mr Beale in particular, as the man who wrote out the will, could have said whether its terms came from the testator himself.
44	39	terval on that day is not sufficient, to rebut the testimony of three witnesses who speak to his mental competency at the moment a seal was by no means a necessary form, even if it had been an instrument required to be sealed an impression is not necessarily requisite tho' under other circumstances it might have deserved consideration how far it was evidence [...] of fraud or falsity in the case in question no inference arises from it. I am therefore of opinion that the will ought to have been permitted to have been proved and to have been established. In answer to the question by the St Helena Government, whether in the event of the will being set aside the property was to be disposed of according to the laws of England or the established laws of England the Island. I beg to state that real property that is land and houses is in all cases of intestacy to follow the course of descent established, and in all things to be subject to the laws and customs of the Island. and that as to personal property	Dr Baildon's opinion that a clear interval that day was improbable could not outweigh the evidence of three witnesses who described the testator's sound state of mind at the moment he signed. A seal was not a required formality for the will. Even for a document that did have to be sealed, an actual impression in the wax was not strictly necessary. In other circumstances, a missing seal might have deserved attention as a possible sign of fraud or forgery. Start of crossed out section [...] End of crossed out section In Captain Alexander's case, however, no such suspicion arose from it. The solicitor therefore concluded that the will should have been allowed to be proved and confirmed as valid. The St Helena government had also asked what should happen to the property if the will were set aside. It wanted to know whether the estate would then pass under English law or under the island's own settled laws. The solicitor replied that land and houses, whenever their owner died without a valid will, were to descend in the manner already established on the island. In every respect such property was to be governed by the island's own laws and customs. Interpretations The solicitor's reply recognised that St Helena possessed its own law of land, distinct from that of England. This marked a clear shift from Charles Yorke's opinion of 27 November 1753, which could find no island law or custom capable of changing the legal nature of leasehold and advised following English law as the safest course. By 1811 the Company's solicitor accepted without hesitation that land on the island descended according to local rules. These included customs such as the widow's right to half her husband's freehold, a more generous provision than English dower. The body of island law that the directors had asked to be compiled in 1762, together with long practice, had evidently come to be treated as binding. Applying local law to land reflected the general rule that land and buildings are governed by the law of the place where they lie. Land could not move, so its inheritance was tied to the legal order of the territory itself. Movable property was often treated differently, following the law of the owner's home, which is why the solicitor dealt with personal property as a separate question. Proving a will meant having it formally accepted by the probate authority so that the executors could act.

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			The Council had evidently declined to do so because of the mark, the missing seal and the rumour of delirium. The solicitor's opinion that it ought to have been proved meant that the Council's refusal had been wrong in law. Alexander's widow and children were therefore entitled to take the estate under the will rather than under the rules for those who died without one.
45	40	property that is every thing but the land and house the succession to that is to be regulated according to the domicile of the deceased if he was a resident within the Island by the laws and customs of the Island if he was there only as a sojourner and being at home it would be to be regulated by the Laws of the place of his established residence. Henry Smith 6th May 1815 Copy Opinion of the Company's Solicitor on the Proclamation of the Governor and Council at St Helena 10th April 1814 I have perused a collection of Papers containing a proclamation dated 10th April 1814 by the Governor and Council of St Helena regulating the mode of proceedings in Civil actions on the legality and propriety of which my opinion	For personal property, meaning everything other than land and houses, succession depended on where the deceased had made his permanent home. If he had lived on the island as a settled resident, its laws and customs would govern. If he had only been staying there, with his real home elsewhere, the laws of the place where he was settled would decide who inherited. Henry Smith signed the opinion on 6 May 181 [...]. The Company's solicitor then gave a further opinion, this time on a proclamation issued by the Governor and Council of St Helena on 10 April 1811. The solicitor had examined a set of papers that included this proclamation. It laid down how civil lawsuits were to be conducted on the island. The Company had asked him whether it was lawful and appropriate. Interpretations The test of domicile mattered greatly on St Helena because so much of its population was transient. Company officials, officers of the garrison, soldiers and seamen might spend years on the island while regarding England, Scotland or India as home. Their personal property, often the bulk of their estates, would pass under the law of that true home rather than the island's customs. Only settled residents had their movable goods divided according to local rules. For a man such as Captain Alexander, whose will was in doubt, the question of where he truly belonged could decide which law governed his money, goods and slaves if the will failed. Submitting the proclamation of 10 April 1811 to the Company's solicitor continued the review of island lawmaking that began with the directors' instruction of 3 February 1762. That instruction required the Council to compile its local laws and send them home so that London could judge whether they conflicted with English law. A proclamation altering the procedure of the civil courts touched the same question of the Council's authority that George Rous had raised in 1780 and J Adair had addressed on 13 January 1787.
46	41	is required The proclamation regulates that no person shall be arrested in certain actions when the demand when the demand shall not amount to 15£ at least and in others to 10£. I apprehend this regulation is equal legal; but I submit that no person ought in any case [...] to be arrested without some person shall previously make an affidavit swearing positively or satisfactorily shewing that the defendant is indebted to the Plaintiff to the amount under which bailable process is not to be issued. In England such affidavit is required by act of Parliament but that act does not extend to St Helena the Governor and Council there who are the judges of a court of civil Judicature are competent to make it a rule of practice. In another part of the proclamation liberty is given to the Court in certain Cases upon the application of either party to waive a trial of an action	The Company had asked its solicitor to judge whether the proclamation was lawful and appropriate. The proclamation laid down that no one could be arrested in certain kinds of lawsuit unless the sum claimed reached at least £15 0s 0d. In other kinds of suit the minimum was £10 0s 0d. The solicitor believed this rule was also lawful. He argued, however, that no one should be arrested in any case unless someone first swore an affidavit. That sworn statement had to state plainly, or show convincingly, that the defendant owed the plaintiff at least the minimum sum below which no arrest warrant could be issued. In England an act of Parliament required such an affidavit, but that act did not apply to St Helena. The Governor and Council sat as judges of the island's civil court, and they had the power to adopt the requirement as a rule of court procedure. Interpretations The thresholds concerned arrest at the start of a civil lawsuit, before any judgement had been given. English procedure allowed a creditor to have a defendant seized and held until he provided bail, which guaranteed that he would appear to answer the

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			claim. The practice was open to abuse, since a man could be jailed on a claim that might prove false or trifling. Parliament had responded by setting minimum sums below which such arrests were forbidden and by requiring a sworn statement of the debt before a warrant could issue. The island's proclamation adopted the minimum sums but omitted the sworn statement. The solicitor's advice supplied that missing safeguard, so that no islander could be imprisoned merely on a creditor's unsupported word. The solicitor's reasoning shows how English statute reached a territory such as St Helena. An act of Parliament applied there only if it expressly extended to the island, and the act requiring affidavits did not. The Governor and Council could not borrow its authority. As judges of their own civil court, however, they held an inherent power to regulate its procedure. By adopting the affidavit requirement as a rule of practice, they could achieve the statute's effect without any need for Parliament or the Company to legislate. This gave the Council a route to align island procedure with English law that avoided the doubts about its lawmaking power raised in 1780.
47	42	by jury and to dispose of it as a cause of Equity in a summary way I apprehend and submit that this is illegal as it is not a rule of practice but an alteration of the law over which they have no power; neither do I think that such a law could be made by the company who have a power of Legislation for St Helena by the Charter granting it to the Company so as the laws are consonant to reason and not repugnant or contrary but as near as may be agreeable to the laws of England. Trial of facts by jury is an essential part of the Laws of England and I believe there is nothing at St Helena which makes that mode of trial impracticable. There is no other part of the proclamation which seems to me to require comment either in point of legality or propriety. Henry Smith 20th February 1816 Margin Notes: Exd [...]	Another part of the proclamation allowed the court, in certain cases and at the request of either party, to dispense with a jury trial and settle the dispute summarily as a matter of equity. The solicitor regarded this provision as unlawful. It did not merely regulate the court's procedure but changed the law itself, which the Governor and Council had no power to do. He did not believe the Company could make such a law either. Its charter did give it power to legislate for St Helena, but only on condition that its laws were reasonable and did not conflict with English law. They also had to follow English law as closely as possible. Trial of the facts by jury was a fundamental part of English law. The solicitor could see nothing on St Helena that made jury trial unworkable there. No other part of the proclamation seemed to him to call for comment on grounds of either legality or suitability. Henry Smith signed the opinion on 20 February 1816, and the copy was marked as checked against the original. Interpretations The solicitor drew a firm line between regulating procedure and altering the law. The Governor and Council, as judges, could set rules on how cases moved through their court, which was why they could adopt the affidavit requirement for arrests. Trial by jury, however, was not a procedural convenience but a right belonging to every party in a common law action. Removing it, even at one party's request, took that right from the other. Because a court's power over its own practice could not reach so far, the provision fell outside the Council's authority altogether. The ruling went further by denying that even the Company could make such a change. J Adair's opinion of 13 January 1787 had treated the charter as ample authority for rules that brought island practice closer to English law. The solicitor applied the same charter condition in reverse. A law dispensing with juries moved away from English law rather than towards it, so it failed the charter's own test. The requirement to follow English law as nearly as possible therefore worked as a real limit on what either the Company or the Council could enact. The solicitor's view that nothing on St Helena made jury trial impracticable echoed the directors' earliest letter in this series. On 3 February 1762 they had anticipated the difficulty of finding enough jurors on a small island. They answered it by allowing Englishmen present on the island to make up the number. With

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			that remedy long available, the island's size offered no ground for abandoning juries in civil cases. A court of equity such as Chancery decided cases without a jury, with the judge settling both facts and law. Allowing a common law action to be treated as a matter of equity in a summary way would therefore have removed the jury entirely. It would also have concentrated in the Governor and Council the whole power of deciding disputed facts in civil cases.
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52	47	EAP 1364 St Helena Document Name and Date St Helena - Letters from England 1762-1816 Dimensions (height x width x depth) (cm) (H) 39 cm x (W) 26 cm x (D) 3 cm No. written pages: 42 No. blank pages: 2 Spine and cover good condition Inside pages good condition foxing present pages were numbered in pencil on the top corner Additional comments Several pages were also numbered but they were blank Photos weren't taken Time taken to photograph (hours) 1 hour	