

were given the task of enforcing, both in harbour and on shore, the requirements of the Act. No penal clause was attached and words that might have created a court were carefully avoided.

In spite of the appointment of Osborne as Royal Governor in 1729, the Government in London delayed the enactment of a statute for the governing of the Island. For sixty more years the justices of the peace tried to keep order despite the Fishing Admirals and the absence of properly settled laws. It was intended that a skilled lawyer should be sent out each year with a commission of oyer and terminer. However, Osborne was merely sent copies of the statutes and an ancient treatise on law. He sent back to London "a copy of the Commission given to justices drawn up in the best manner he was capable of doing not being well acquainted with forms of such Commissions nor with powers granted him not having time enough to prepare himself with them before he received His Majesty's command to begone".* The Admirals continued to seize and punish offenders. They frequently set aside the new magistrates, who were often ill-equipped and who sometimes assumed tasks beyond the administration of justice for which a statute would have provided proper authority. †

The Governors sat in open court until 1789, applying "quarter-deck law".‡ The Naval Governor customarily named a subordinate officer as his surrogate or Deputy Governor, one of whom was instructed by Capt. George Rodney (later Lord Rodney) as follows:—

"In case any other complaints shall appear before you of crimes and misdemeanours committed upon the land you have full power to adjudge and determine the same according to the custom of the country and the best of your judgment."

In 1750 the Governor's Commission included authority to set up a court of oyer and terminer. This step entailed trial by jury in Newfoundland. Each case had to be reported to London before sentence could be executed.

It was recorded in 1784 that the courts in Newfoundland were the local justices, the Court of Oyer and Terminer, the Court of Vice-Admiralty and the "Justice Courts", held twice a week in St. John's at the instance of the Governor. The Governor seemed to make the Judge of Admiralty head of his Law Department. † The judges of the Court of Oyer and Terminer usually included the Judge of Admiralty (who presided), two or three justices of the peace, and one or two merchants. According to contemporary practice, judges were paid by fees, which were heavy.

At length a great indignation arose among the settlers against this system. One result was a suit against Governor Sir John Elliott on his return to England in 1789, and the end of the Governor's practice of sitting in open court. The next Governor, Admiral Milbanke, created in 1789 a (civil) Court of Common Pleas with

* Despatch to the Duke of Newcastle, October 14, 1792.

† For example, the summoning of merchants and masters to pay wages.

‡ D. W. Prowse, *A History of Newfoundland*, London, 1895.

† Dr. Gardiner of Boston; he noted with disgust that the judge of the time was "keeper of a gin-shop".