The use of the law:

The case of Nevis & St Kitts at the end of the eighteenth century

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This chapter examines the practice of the law by British merchants who traded with Nevis and St Kitts in the late eighteenth century. This study of the institutional framework allowing for early modern long-distance trade in the British Atlantic started by focusing on the trade network of Tobin & Pinney. Tobin & Pinney relied on "friendships" and continuing personal relationships to run their business, but they also insisted on establishing contractual relationships with their business partners and the planters they served. The originality of the British commission trade laid in the fact that it operated within a common jurisdiction and legal framework. This present chapter therefore intends to further explore how metropolitan merchants used formal mechanisms to settle their disputes regarding debts disputes and credit. The study of the legal records, combined with the examination of private records such as the Pinney papers can help us uncover the ways in which merchants and planters used the courts of justice. Another source is provided by the Commission of Enquiry into the Administration of Civil and Criminal Justice in the West Indies, ordered by the House of Commons.[1]

Studies of legal systems in colonial America have pointed out the role of local conditions in influencing colonial interpretation of the English common law and its adaptation by local communities. Settlers in the New World were quick to adopt the legislative and legal framework of the Mother Country, but often had to face challenging circumstances brought by the small size of these communities and the inexperience of

[1] 1826-7 (36) Coms. Of Enquiry into Administration of Civil and Criminal Justice in W. Indies. Third Report (Antigua, Montserrat, Nevis, St Christopher's, Virgin Islands), Appendix, Ordered by the House of Commons. The commissioners arrived in Nevis in October 1823.
see House of Commons Parliamentary Papers Online.

their inhabitants. Advocates of path dependency theories will assume that these initial deficits either persisted over time or at least durably affected the operation of local institutions. Another assumption is that colonial institutions were inefficient, corrupt or weak because of the distance between these settlements and Britain, and the lack of control over the elites in charge.[2] Contemporary sources contain complaints about the deficiencies of colonial institutions and insisted that lawsuits in the Caribbean were costly, lengthy and in the hands of planters, who were both judge and jury.[3] These problems were certainly accentuated in small plantation societies like Nevis and St Kitts at the end of the eighteenth century. The study of the legal records, combined with the examination of private commercial correspondences such as the Pinney papers, can help us uncover the ways in which merchants and planters used the courts of justice and help us settling some of the issues at stake.The aim here is not to review the functioning of the colonial civil justice system, but to evaluate to which extent these limitations could be applied to Nevis and St Kitts courts in the late eighteenth-century and the ways in which they may have affected the use metropolitan merchants made of them. Therefore, this chapter first examine the form of the law and the theoretical principles determining civil justice in Nevis and St Kitts, before turning to the application of the law. It also raises questions about the specificities of the colonial courts in contrast to comparable British courts.

Unlike legal historians, economic historians interested in Atlantic trade and finance have stressed the importance of the legal framework surrounding it in explaining the good performance of English trade with the West Indies.[4] Departing from the English

[2] Much of the work on justice systems and law enforcement in early modern period has focused precisely on justice as a social process and by extension on the constraints, or lack thereof, the elites faced when they tried to abuse their power, see J. M. Beattie, *Crime and the courts in England, 1660-1800* (Oxford, 1986); D. Hay "Property, authority and the criminal law" in N. Landau (ed.), *Law, Crime and English Society, 1660-1830* (Cambridge, 2002); and D. Greenberg, "Crime, Law Enforcement, and Social Control in Colonial America," *The American Journal of Legal History* 26 (1982): 293-325.

[3] Amongst others, 1826-7 (36) Coms. Of Enquiry into Administration of Civil and Criminal Justice in W. Indies. Third Report (Antigua, Montserrat, Nevis, St Christopher's, Virgin Islands), Appendix, Ordered by the House of Commons. The commissioners arrived in Nevis in October 1823; see House of Commons Parliamentary Papers Online.

[4] Jacob M. Price, "Credit in the Slave Trade and Plantation Economies," in Barbara L. Solow (ed.), *Slavery and the Rise of the Atlantic System* (1991), pp. 309-11. Russell R. Menard, "Law, Credit, the Supply of labour, and

tradition of separating landed wealth from commercial wealth, the 1732 *Act for the More Easy Recovery of Debts in America*, which applied to the colonies and not to England, allowed greater powers to the creditor, who could seize his debtor's land and chattel.[5] The evidence found in monographs of mercantile firms involved in this trade have tended on the other hand to highlight the difficulties faced by merchants in recovering the money they had lent to planters (*ref.)*

The greater protection granted the creditor in the Anglo-Saxon system in theory should not, however, automatically lead us to assume that it made a difference in practice. We need to establish whether in practice British merchants benefited from better-established institutions when it came to debt litigations and the resolution of financial disputes. The aim of this paper is to investigate how the different actors used these institutions and legal instruments and therefore to determine to which extent the advantages of the legal framework in place translated into practice. The following sets of questions will be examined: What were the difficulties, if any, faced by metropolitan merchants who started lawsuits in the West Indies? To which extent were these problems specific to the West Indian context and how much did the King's Bench courts in St Kitts and Nevis differ from those in Britain? Second, what was the impact of the Debt Recovery Act of 1732? Finally, how did merchants used the courts, if they did, and for what purposes? This chapter first examines the form of West Indian institutions and law within the context of the English Empire and assess the extent to which the challenges plaintiffs faced in the Nevis and St Kitts courts differed from those inherent to the same courts in England. It then assesses whether the 1732 Debt Recovery Act was beneficial to creditors in practice, and finally examines more in depth the practice of the law as found in the King's Bench records and in merchants' correspondences and the purpose of the courts in this context.

the Organization of Sugar Production in the Colonial Greater Caribbean: A Comparison of Brazil and Barbados in the Seventeenth Century," in John J. McCusker & Kenneth Morgan (eds.), *The Early Modern Atlantic Economy* (2000).

[5] Claire Priest, "Creating an Americann Property Law: Alienability and its Limits in American History", *Law and Economics Workshop* 2 (Fall 2006): 1-89/.

A. The form of the legal system

1. Institutions and governance in the Leeward Islands: an introduction

Although united politically as part of the same government, headed by a Captain-General or Governor-in-Chief, each island was administered by a Governor, a Council and an Assembly. The Council comprised the principal planters and inhabitants of each island, which were appointed by the Crown on the governor-general's recommendations. The assembly was composed of two representatives from each parish, who were themselves elected by male, white and Protestant inhabitants of the island, who possessed at least ten acres of freehold land or a house and land to the value of £10 a year.[6] Councillors and assembly men enjoyed secure positions and a high degree of independence from the governor-general: the discharge of the former had to be justified by a good reason or approved by the Board of Trade and Plantations while the governor had no control over the nomination or suspension of the latter.[7]

The Leeward Islands were regulated by the common law. Each island had a separate legislature, whose origins are to be found in the early days of settlement.[8] Similarly to the political system, planters dominated the courts of justice. The governor-general also officiated as the chancellor of the colony and was thus the most senior legal official. He was in charge of appointing the judges of the courts. Most judges were recruited amongst the ranks of the councillors and at the end of the eighteenth-century, in Nevis, all the judges, including the chief Justice, were nominated members of the

[6] Dyde, *Out of the Crowded Vagueness: A history of the islands of St Kitts, Nevis and Anguilla* (Oxford, 2005), p. 90.
[7] Dyde, *Out of the Crowded Vagueness: A history of the islands of St Kitts, Nevis and Anguilla* (Oxford, 2005), p. 90.
[8] This is documented in Goveia, *Slave Society in the British Leeward Islands at the end of the Eighteenth Century* (New Haven & London, 1965), pp. 51-55.

Council.[9] This article explores in which ways this domination by the planters of the political and to a larger extent legal system influenced and altered the use of the law in Nevis.

b. The legal framework in Nevis and St Kitts

The operation of colonial legal system in the Atlantic was hazy. On the one hand, colonies were understood to be an annex of the English nation and their respective laws had to be in adequacy with the laws of England, that is they could not be in contradiction with the former. The Board of Trade stated in 1733 that "all these colonies (...) by their several constitutions have the power of making laws for their better government and support, provided they be not repugnant to the laws of Great Britain, nor detrimental to the Mother Country."[10] Along these lines, the Leeward Islands obeyed the common law. At the same time, given the facts that colonies were entitled to pass their own laws, their laws differed from those of England and their constitution influenced by local conditions and needs. In the words of Bilder, there was a "conversation between English laws and local concerns" which resulted in different outcomes in different colonies, despite commonalities.[11]

The legal framework of Nevis is documented in a report called the Laws of Nevis from 1664 to the middle of 1818, printed by the authority of the council and assembly of Nevis. Generally speaking, the common law of England and the Acts of the English Parliament were operative in the colonies. The island of Nevis had the following courts dealing with civil justice: the court of Chancery, the court of Error, the court of King's Bench and Common Pleas and the court of Vice-Admiralty.[12] However, only the court of King's Bench

[9] Dyde, *Out of the Crowded Vagueness: A history of the islands of St Kitts, Nevis and Anguilla* (Oxford, 2005), p. 125.
[10] Board of Trade to the House of Lords, Jan 23rd 1733/34, CHS Coll, vol.5, pp. 446-7.
[11] Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, Mass. & London, England, 2004), p. 2. See also Joseph Henry Smith, *Appeals to the Privy Council from the American Plantations* 465 (1950); On issues relating to the transmission of English Common Law and statutory law to the colonies see Daniel J. Hulsebosch, "The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence," *Legal and History Review* 21 (2003): 439, 460-79.
[12] The records of the Court of Chancery do not survive. The parliamentary report of 1826-27 stipulated however that "there has been very little chancery business in this island, for the last fifty years."

and Common Pleas and the court of Error were established by the laws of the island. These courts were modelled on the British system. Courts of vice-admiralty focused on offences occurring on the seas, such as piracy, or involving seamen. Debt recovery involving metropolitan merchants was a matter left to the remaining courts. The Court of King's Bench and Common Pleas had been founded by an Act of 1732 and was to have the same authority as in Great Britain.[13] These common law courts, in their civil prerogatives, were mainly concerned with debt litigations. By the middle of the seventeenth century, lawsuits regarding debt recovery in England represented 88 percent of the cases in Common Pleas and 80 percent of that of King's Bench.[14] A study of the courts of King's Bench, Common Pleas and Exchequer of the Pleas shows that "contract actions, almost all involving debt collection, accounted for over 90 percent of total actions" in these courts between 1740 and 1840.[15] The Court of Chancery, an equity court, was also concerned with debt recovery. The type of lawsuit and the nature of the evidence that could be produced usually determined the choice of court: proof of debt, such as bonds, bills of exchange and promissory notes had strong weight in common law courts, more narrowly focused on a single issue, and gave the creditor a clear advantage. In the absence of incontestable evidence, more complex business disagreements such as breaches of contracts or partnerships, litigations over accounts and disputes over mortgages were more likely to be resolved in Chancery and equity courts.[16] Henry Horwitz and Patrick Polden categorised the lawsuits in Chancery for 1818/19 and found the following repartition. Disputes over business transactions represented 16.4 percent of cases, litigations over the enforcement of conditioned bonds and other debt instruments 9.2 percent, those regarding inter vivo trusts and marriage settlements 10.5 percent, disputes over landholding 30.8 percent and those over estates, mostly suits brought by

[13] Hastings Charles Huggins (ed.), *The Laws of Nevis and the Laws of the Leeward Charibee Islands* (1867, 2nd ed.). These two courts would constitute two separate jurisdictions in England, but were blended in Nevis and St Kitts.

[14] Craig Muldrew, "Credit and the courts: debt litigation in a seventeenth-century urban community," *Economic History Review* 46 (1993): 24.

[15] The samples were taken from plea rolls and entry books of judgment for the court of King's Bench, Common Pleas and Exchequer of Pleas for the following years: 1740, 1765, 1790, 1815 and 1840, in Clinton W. Francis, "Practice, Strategy, and Institution: Debt Collection in the English Common-Law Courts, 1740-1840," *Northwestern University Law Review* 80 (1986), p. 810.

[16] These differences are highlighted in Christine Churches, "Business at Law: Retrieving Commercial Disputes from Eighteenth Century Chancery," *The Historical Journal* 43 (2000): 940.

representatives of the deceased seeking to bring in assets, 32.3 percent.[17] The Court of Error dealt with appeals brought from the court of Kings' Bench and Common Pleas, but was seemingly underused in Nevis, since the Parliamentary Enquiry found in 1826/7 that "one instance only can be traced of the entire prosecution of a writ of error to judgment, in this island, for the last forty years."[18]

The laws of St Kitts were established separately. St Kitts was occupied by the French in the early 1780s and Nevis surrendered in 1782. The long-term effects of this on the legislative framework seem to have been minimal. An Act was passed in St Kitts for "establishing and ratifying certain Acts made by the Governor and Assembly of this island, during the late subjection thereof to the Crown of France," and the main change concerned the treatment and punishment of slaves.[19] The courts for the administration of civil justice included, similarly to Nevis, the court of Chancery, the court of King's Bench and Common Pleas, the court of Error and the Court of Vice-Admiralty. In addition, St Kitts was endowed with a Court of Ordinary and an occasional Court-Merchant. The jurisdiction of the court of ordinary encompassed the legal process surrounding wills and the administration of the estate of a deceased. Little is known of the court merchant in St Kitts, as no records survive and its jurisdiction is not discussed in the 1826/7 Parliamentary Report.

Another influence on the the law in Nevis had a different origin, yet one that was also determined by factors specific to the West Indian colonies. The mounting problem of West Indian debt prompted the Crown to establish a legal device better able to solve disputes and protect creditors. The 1732 *Act for the More Easy Recover of Debts in his Majesty's Plantations and Colonies in America*, regulating exchange between metropolitan traders

[17] Henry Horwitz & Patrick Polden, "Continuity or Change in the Court of Chancery in the Seventeenth and Eighteenth Centuries?", *Journal of British Studies* 35 (1996): 33.
[18] 1826-7 (36) Coms. Of Enquiry into Administration of Civil and Criminal Justice in W. Indies. Third Report (Antigua, Montserrat, Nevis, St Christopher's, Virgin Islands), Appendix, Ordered by the House of Commons. The commissioners arrived in Nevis in October 1823; see House of Commons Parliamentary Papers Online.
[19] Lines of enquiry comprise; the role of the Gardiners during this period, and the role of James Robinson, attorney and abolitionist (researched by Alex. Robinson, Liverpool)

and their West Indian counterparts stated that proof of law was to be sworn before an English magistrate and carry the seal of a city, borough or township, and was to have the same force in a colonial court. Jacob Price, writing on Atlantic credit, thought much of what he called the Anglo-Saxon or "creditor defence model", which he opposed to the "Latin model." In the latter model, priority was given to protecting the integrity of the plantation as a productive unit, and creditors could not recover their debts by seizing non-landed dependencies of the plantation such as slaves, livestock or appurtenances. By contrast, the Debt Recovery Act of 1732 gave British creditors the possibility to better protect their interests. The Act stipulated that the "lands, houses, chattels, and slaves" of debtors could be seized for the recovery of debts "in the like Manner as Real Estates are by the Law of England liable to Satisfaction of Debts due by Bond or other Specialty."[20] According to Price, the Act "made a very effective legal instrument of the *bond* given by planters buying slaves on credit."[21]

In the English law, the writ of *fieri facias* allowed the sheriff to seize the goods and chattels of the defendant and to sell them, the proceeds of which were then delivered to the creditor. The writ of *elegit* gave the sheriff the right to obtain an appraisal of the defendant's goods and chattels, and the creditor could take possession of the goods at the appraised value. In case the creditor refused this arrangement, he could then accept one half of the defendant's real property in tenancy until the debt was fully repaid.[22] In a similar fashion, the writ of *levari facias* left the debtor in full possession of all of his land and paying the debt with a part of his annual profits. The writ of *capias ad satisfaciendum* authorized the sheriff to seize the body of the debtor for imprisonment. Those exempted from this treatment included peers and Members of Parliament, as well as executors of estates. During the debtor's imprisonment, the creditor was unable to claim a seizure of

[20] 5 Geo II c. 7, quoted in Price, "Credit in the slave trade and plantation economies", in Solow (ed.) *Slavery and the Rise of the Atlantic System* (Cambridge, 1991), p. 309.
[21] Price, "Credit in the slave trade and plantation economies", in Solow (ed.) *Slavery and the Rise of the Atlantic System* (Cambridge, 1991), p. 310.
[22] Priest, "Creating an American Property Law: Alienability and Its Limits in American History," *Law and Economics Workshop* (Berkeley, 2006), p. 23; Claire Priest adds that "outside the common law courts, the Merchant Court and Staple Court offered creditors the remedy to a temporary tenancy of all the debtor's land until the debt was satisfied (...) if the debtor formally acknowledged the debt in court."

the defendant's land. This procedure permitted the family of the defendant to keep full ownership of all the freehold land, whilst putting pressure on the debtor's relatives and friends to pay the debt or secure it better.[23] The law surrounding debt litigation clearly favoured the creditor, who could his or her debtor arrested and imprisoned, and used it as a threat, enticing debtors to respect their financial obligations.[24] Eighteenth-century commentators agreed that it gave "extraordinary powers to the creditor", and in the words of Innes, "the courts played no more than a passive and procedural role, never attempting to ascertain the debtor's resources or to impose any kind of settlement."[25] Yet, the imprisonment of debtors was a rare occurrence in Nevis and St Kitts, which will receive further attention.

3. The sources

In Nevis, some King's Bench and Common Pleas records survive for this period. The King's Bench was the highest court of common law in England and its colonies, and its jurisdiction extended to both civil and criminal actions. The records that survive in Nevis and St Kitts concern the "Common Pleas" side, that is those documenting civil justice. The King's Bench courts produced large amounts of paperwork. The blinded volumes left in the archives of Nevis and St Kitts are "rule books." Their function was to record orders of court, that is rules granted in order to allow a suit to proceed to the next stage. The entries are chronological. The volumes examined concern the period 1779-1822, and coincide. For St Kitts, I have examined the King's Bench and Common Pleas records for the following years: 1779-83, 1783-86 and 1790-95. The remaining records for the period concerned could not be examined because of their poor condition. In both islands, the

[23] Priest, "Creating an American Property Law: Alienability and Its Limits in American History," *Law and Economics Workshop* (Berkeley, 2006), p. 24; Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (2002), p. 25.
[24] Innes, "The King's Bench prison in the later eighteenth century: law, authority and order in a London debtor's prison," in Brewer & Styles (eds.), *An Ungovernable People: the English and their Law in the Seventeenth and Eighteenth Centuries* (London, 1980), p. 254.
[25] Innes, "The King's Bench prison in the later eighteenth century: law, authority and order in a London debtor's prison," in Brewer & Styles (eds.), *An Ungovernable People: the English and their Law in the Seventeenth and Eighteenth Centuries* (London, 1980), p. 253.

court of King's Bench and Common Pleas met on the first Tuesday of March, April, May, June, July and August.

In St Kitts, the existence of a court merchant is mentioned by the 1826-7 Parliamentary report. It referred to an act constitutive of this court, which seems to have been later amended by an Act, no 365. This Act stated that "the limiting the sum recoverable in this court to £100 is declared inexpedient and it is made allowable to sue in it in all cases. No demurrer is permitted in this court, or new trial, or arrest of judgment, unless sufficient case be immediately shown." No records survive for this court.

In Nevis, I have complemented this source with the deed records for the same period. These records contain the following: letters of manumission, powers of attorneys, land titles and contracting regarding their transfer following land sales, mortgages. Whereas 10 volumes survive for the period 1778-1803, three of these were in too poor conditions to be used. They concerned the following years: 1787-88, 1793-94 and 1797-98. In St Kitts, the Deed records were often too fragile to be consulted and therefore my analysis of the use of the law in St Kitts was confined to the King's Bench and Common Pleas records. Lastly, more emphasis has been put on the cases that concerned John Pinney and James Tobin. The study of the commercial correspondence of the firm of Tobin & Pinney and that of John Pinney highlights these merchants' commercial practices and helps interpret their recourse to legal measures and therefore lead to a better understanding of their use of the law compared to that of other firms.

B. The legal system in practice: limits identified

Besides a review of the legislative framework in place before Emancipation, the 1826-7 Commission of Enquiry into the Administration of Civil and Criminal Justice in the West Indies documents the institutional limits of the rule of law in the West Indies. This report represents a good source of information for the functioning of the common law courts in

the late eighteenth and early nineteenth centuries. Although drafted in the 1820s, it was based on surviving records for preceding periods and oral testimonies and interviews with local informants. The shortcomings of the legal system were also derived from contemporaries' accounts of the justice system, and the historiography abundantly covers these concerns.

1. Jurisdictional delimitation?

First, with regard to the King's Bench court, the jurisdictional delimitation of the King's Bench court in Nevis and that of Westminster remained unclear. The "Act for establishing the courts of King's Bench and Common Pleas stipulated that the Nevis judges had the same powers as the judges of the two courts at Westminster, "subject, nevertheless to such jurisdiction, power, &c. as the court of King's Bench at Westminster, hath usually had, over all other courts in His Majesty's dominions, &c." Yet the commissioners added that "what this jurisdiction of the court in King's Bench, in England, over the courts at Nevis, may be, is not defined by the Act, and would, I fear, be unprofitable to inquire." The commissioners had difficulties having the seventeen rules of this court identified for them, as there was no printed or manuscript version to describe them. This confusion can be interpreted using the framework proposed by Bilder's analysis of the "transatlantic constitution." In this instance, the legal institutions in Nevis and St Kitts were modelled on the English ones and obeyed the same principles, if not the authority of jurists in Westminster. At the same time, a certain degree of local autonomy was expected in the rendering of justice in the American colonies.

2. Personnel: lack of training

According to the report, areas that could be improved included the appointment of judges, and it was recommended that "judges [be] appointed from among able and

experienced persons of the legal profession, from home, for all the islands." This opinion is found in other accounts of the rendering of justice in the West Indies and dominated the debate on local jurisprudences. One observer stated that "the judges of which are not lawyers, but planters, who are frequently dictated to and even directed by the barristers, particularly when any cause which requires legal knowledge is in question."[26] The keeping of records was also deemed poor: "No records of the pleadings and issue is made up and kept, but merely minutes of these, and of the proceedings, which are afterwards briefly noted in a book, called the Court Book." The judges were not required to have been barristers or to have gone through a course of previous legal study. Similarly, barristers did not have to have been called to the bar in England.[27] Lastly, the commissioners had difficulties procuring the laws and rules of St Kitts and the governor himself declared not having a copy for himself, and "was obliged to grope in the dark." When referring to the court of Error on St Kitts, it was deemed "of little utility" and the chief justice declared that "the persons who are to revise the determinations of the courts of law should certainly be qualified by legal knowledge (…). I cannot suggest any other improvement in the administration of the law in this court, except its annihilation, inasmuch as it offers no gradation in an appeal from the court of King's Bench and Common Pleas to the King in Council."

Despite these obvious limitations, there was little attempt to reform the system from within or increase the level of qualification of court practitioners in Nevis and St Kitts. Through repeat service, judges and barristers in the West Indies probably compensated for their lack of formal training. Hence, it is useful when trying to assess the knowledge and capacity of court practitioners to distinguish between formal and informal legal education. D. Lemmings, in his study of English barristers in the 17th and

[26] John Luffman, *A Brief Account of the Island of Antigua, together with the customs and manners of its inhabitants, white as well as black; as also an accurate statement of the food, clothing, labour. In Letters to a Friend, Written in the Years 1786, 1787, 1788* (London, 1789), Letter IV. Quoted in GOveia,*Slave Society in the British Leeward Islands at the end of the Eighteenth Century* (New Haven & London, 1965), p. 62.
[27] 1826-7 (36) Coms. Of Enquiry into Administration of Civil and Criminal Justice in W. Indies. Third Report (Antigua, Montserrat, Nevis, St Christopher's, Virgin Islands), p. 76. A recent development was however the obligation for barristers to have kept twelve terms at least at some of the inns of court in London.

18th centuries, notes that the level of formal legal training at the Inns of Court declined between 1680 and 1730. This change can be partly attributed to the growing availability of printed material and books: men willing to receive legal education "received no institutionalized guidance in regard to the course of their study."[28] As a result, rather than have his son "sequester himself from the world, and by a tedious lonely process (...) extract the theory of law from a mass of undigested learning,"[29] a father would choose to have him receive informal advice and guidance from an experienced barrister. This reminder helps us to bridge the gap between the state of affairs in England and that in the colonies. As pointed out earlier, men in charge of the political and judicial institutions were taken from the ranks of the planters and the economic elite of the islands. What judges and court practitioners did not have in initial formal training, they certainly gained in informal experience due to repeat services and overlapping functions in the different courts. For instance, in the 1780's, Archibald Esdaile was simultaneously master in Chancery, associate justice in the court of King's Bench and Common Pleas and judge of the court of vice-admiralty.[30] In 1826/7, the chief justice, who was also a judge of the court of Admiralty and master in Chancery was deemed a capable and qualified man by the Parliamentary Commission.

3. Delays and costs

Delays were clearly seen as an issue. When no means of delay were used by the defendant, judgments could be reached within forty or forty-one days. However, when commissioners enquired about defendants' uses of methods of delay, they were told that "where the object is important, and the defendants have the command of money, it may be indefinite and is incalculable." In St Kitts, delays were also deemed inconsiderable when the defendant or the plaintiff decided to "push on a cause."

[28] David Lemmings, *Gentlemen and Barristers: The Inns of Court and the English Bar 1680-1730* (Oxford, 1990), p. 98.
[29] Blackstone, *Commentaries,* i. 31, quoted by David Lemmings, *Gentlemen and Barristers: The Inns of Court and the English Bar 1680-1730* (Oxford, 1990), p. 99.
[30] Brian Dyde, *Out of the Crowded Vagueness: A history of the islands of St Kitts, Nevis and Anguilla* (Oxford, 2005), p. 125.

The issue of cost was more prominent in the complaints collected in St Kitts. The commissioners were met in St Christopher by a litany of complaints, which were all explicitly reported in the final document. Merchants from Basseterre deplored that "costs here are enormous. In Chancery, you cannot recover any thing under an expense of £1,000. No man thinks of venturing *there*, except for large interests. There is no court, or proceeding before magistrates, in this island of St Kitts, for the recovery of small debts; hence, they are frequently given up and lost altogether." Moreover, he declared being in an arrear of 500 causes and complained of "vexatious delays in the common-law courts, and the commercial speculations to which they notoriously gave rise."

The expenses of lawsuits also prevented the efficient administration of justice. The example of a Mrs MacLeod, who, having sued for £8 and 2 shillings, had spent £30 before the case was even resolved and charged 14 shillings for discontinuing the action. John Pinney himself had a poor opinion of the justice system, confiding in 1803 that "the parties concerned tremble at the idea of expense (...). Avoid law as you would the most venomous reptile and let nothing induce you to engage but the prevention of an absolute sacrifice."[31]

It is very difficult to assess the costs of lawsuits in the absence of quantitative evidence for Nevis and St Kitts. However, complaints about costs and delays were not specific to colonial courts and were a recurrence when it came to discussing the performance of the King's Bench and Chancery Courts in England. Henry Horwitz and Patrick Polden report two contemporary views on the matter: it was not worth suing for any debt smaller than £500, and that "the common costs of carrying a suit in Chancery *to a hearing* amount to at least twenty pounds." Although the Nevis and St Kitts King's Bench and Common Pleas records indicate that the legal costs were borne by the defendant when he had lost a case, their amount is never specified, leaving Mrs

[31] Pares (1950), p. 266.

MacLeod's testimony as our only example of legal costs. On average, it is estimated that the ratio of total legal costs to the amount recovered in contract trials in the court of King's Bench in 1790 was 6.9.[32] Mrs MacLeod had spent 3.8 times the amount of the debt she was owed when she discontinued her claim. Had she continued her lawsuit, and been awarded judgment, it is possible that the total cost of the suit would have been as high as 7 times the initial amount claimed for. Although costs and delays were certainly impeding the operation of the courts in Nevis and St Kitts, these problems were not specific to these islands and no different to the ones experienced by plaintiffs and defendants in the metropolis.[33]

Lastly, legal instruments were specifically designed to address these issues, and in particular merchants had ample recourse to "warrants of attorneys." These were used to confess judgment in situations other than litigation settlements and before bringing a case to court. It was used as a security by the creditor, who upon the first default, could immediately prosecute against the possessions and even body of the debtor without having to wait for the final judgment. In Nevis, 37% of all the cases and 55.5% of all actions of debts on obligation were brought on warrants of attorney, thus reducing delays of execution and costs.[34]

4. Vested interests

Risk of collusion between the planter class and the personnel of the courts was another recurrent complaint in contemporary accounts of the rendering of justice in the American colonies. It was for instance believed that the judges in the Chancery Courts were used by debtors to secure injunctions against proceedings by their creditors, and Payne the

[32] Clinton W. Francis, "Practice, Strategy, and Institution: Debt Collection in the English Common-Law Courts, 1740-1840", *Northwestern University Law Review* 80 (1986): 945.
[33] The same problems can be identifed in the correspondence of the Whitehaven merchant Walter Lutwidge, in Christine Churches, "Business at Law: Retrieving Commercial Dispute from Eighteenth Century Chancery," *The Historical Journal* 43 (2000): 937-954.
[34] For more on warrants of attorney, see C. W. Francis, "Practice, Strategy and Institution: Debt Collection in the English Common-Law Courts, 1740-1840," *Northwestern University Law Review* 80 (1986): 826-7.

Governor General of the Leeward Islands in 1774, deemed it "dangerous the place the power of injunctions in the hands of representatives of the planter class," since "in small societies like those of the Leeward Islands, Courts of Chancery if constituted of the Council, will almost invariably be composed of the People who most probably have occasion to appeal to it for Redress."[35]

Edwards in his *History, Civil and Commercial, of the British Colonies in the West Indies*, reported a similar concern in the St Kitts of the early 1790s: "The Governor (-General) is chancellor by his office and in St Christopher sits alone. Attempts have been made to join some of the council with him... but hitherto without success, the inhabitants choosing rather to submit to the expense and delay of following the chancellor to Antigua, than to suffer the inconveniency of having on the chancery bench judges, some of whom it is probable, from their situation and connections, may be interested in the event of any suit that may come before them."[36]

Although no direct mention of collusion is found in the 1826-7 Commission report, one section seems nonetheless to allude to the lack of objectivity of the judges. After stating what could be done to improve the court, the commissioners stated that "a considerable difficulty, however, seemed to present itself, in the case of exceptions to the opinion or direction of the judges: and in cases of writs of error, which the same gentlemen feared would frustrate every improvement, unless a court of Appeal or of Error were provided, differently constituted from that which is now established by law." The court of error was concerned with appeals brought from the court of King's Bench and Common Pleas in civil case. However, the entire prosecution of a writ of error to judgment only occurred once in the forty years preceding the commission report. One explanation proposed for this was the high costs involved.

[35] Quoted by Goveia, *Slave Society in the British Leeward Islands at the End of the Eighteenth Century* (New Haven & London, 1965), p. 61.
[36] Edwards, *The History Civil and Commercial of the British Colonies in the West Indies* (London, 1793), vol. 1, p 430.

At the level of the individual trader, there is evidence that the resistance by planters to actions by their creditors was expected and resented. John Pinney, who acted as an attorney for the London factors Mills & Swanston, wrote in 1776: "the method of doing business in this country is such, as to render it irksome and disagreeable… every man that does justice to his constituents is deemed an enemy to the debtor, and thereby often dragged into disputes and quarrels, contrary to his inclination; though he takes every method in his power to avoid it, by treating every unhappy person with tenderness and respect, yet it avails nothing- perseverance in doing himself or constituent justice is sufficient cause to cancel all former obligations."[37]

The facts that most judges and court officials were planters could pose an undeniable problem and contemporary sources occasionally reflect this. The Huggins case in 1810 has been well documented and provides an illustration of the interrelatedness of planter society. Edward Huggins was an important planter on Nevis, who in 1810 was accused of cruelty on his slaves. He was acquitted by a local court but a commission was set up and investigated possible collusion between the judges and Edward Huggins (*use Dyde)* A second case in 1817 also involving Edward Huggins illustrates the mechanisms in place. Another commission was set to investigate renewed accusations of the planter having ill-treated slaves. Edward Huggins was at the time the attorney of Thomas J. Cottle, President of the Island, during the latter's stay in England, and the slaves in question were attached to Cottle's estate. Thomas Cottle had been one of the Assistant judges in the King's Bench and Common Pleas court. At the time of the events, Edward Huggins was involved in a legal action in the name of Thomas Cottle against Mr Weekes for unlawful detention of slaves belonging to MM Daniels, merchants in Bristol. This only serves to illustrate how tightly connected the different segments of Nevisian society were.[38] Besides direct kin (Cottle married Frances Huggins in 1824) and friendship ties, financial connections between planters also influenced the delivery of justice. The King's Bench and Common Pleas records remind us that loans between planters were a widespread

[37] Quoted by Pares, *A West India Fortune* (London, 1956), p. 72.
[38] *Case in Nevis, 1817; An Account of E. Huggins's alleged severe chastisement of slaves* (London, 1818).

practice, and that metropolitan agents did not have the monopoly of credit on the island. The same Edward Huggins was an important lender on the island. In the same document that investigated the 1817 case, it is reported that "Mr Weekes expressed to Mr Wane of Nevis, his dependence on Mr Huggins to extricate him from his difficulties by a loan" and a footnote specifies that "Mr Weekes' favourable opinion of Mr Huggins' treatment of slaves, at least previously in the present prosecution, may be fairly inferred from this offer."

In Nevis, the judges were all issued from the planter class. In the late 1770's and early 1780's, the Chief Justice was John Dasent and his assistants were Joseph Williams, Magnus Morton and Joseph Browne. In the mid-1780s, Thomas Cottle and George Webbe Daniell joined as assistant justice. George Webbe Daniell later became Chief Justice and his assistants were John Taylor, James Huggins. The lack of separation between the judicial power and the social order did not prevent firms from bringing cases against planters who were also court judges. At the same time, this state of affairs did not prevent metropolitan firms from engaging lawsuits against judges and assistance justice. In 1788, the Bristol firm of Bright, Baillie and Bright took action against George Webbe Daniell and John Arthurton in a plea of debt for £1,254.17.4 held by bond and warrant of attorney. The judgment, which was against the defendant, was granted on 3rd June 1788 and execution of it was issued on the same day.[39] George Webbe Daniell in 1788 was the object of another lawsuit by a metropolitan firm, Protheroe & Claxton, for a plea of debt of £2,000 sterling due by bond and warrant of attorney. Judgment was granted in favour of the plaintiffs in February 1790 and signed George Forbes.[40] Similarly, the London-based Lane, Son & Fraser sued Magnus Morton in 1788, for a debt due by warrant of attorney for £6,000 sterling. The judgment was this time again granted against the defendant in May 1788 and was signed by George Webbe Daniell.

[39] Bright, Baillie & Bright vs. George Webbe Daniell & John Arthurton, King's Bench and Common Pleas records, 1785-1822.
[40] Protheroe & Claxton vs. George Webbe Daniell, King's Bench and Common Pleas records, 1785-1822.

This collusion between the local elites and court practitioners was not specific to Nevis and St Kitts. They did characterize other small colonial communities, such as the one studied by Phillips. His work, alongside that of other historians of the British legal system,[41] examines jury composition in criminal courts and its influence on jurors' decisions and raises questions about the control or lack thereof over courts of justice. In Halifax, Nova Scotia, grand jurors tended to be recruited from the ranks of the local elites and were usually commercial men or community leaders.[42] The large presence of local elites in the court system was also to be found in England, especially in rural settings, where the size of the community constrained appointments. The only difference was in the profile of the jurors, determined by the composition of the population: the gentry and JP's rather than commercial men dominated English county courts.[43] Based on his study of the common law courts in England between 1740 and 1840, Francis also argues that "urban juries, 95 percent of which had a majority of merchants and tradesmen jurors, were slightly more biased towards creditor-biased than rural juries, 95 percent of which had a majority of gentlemen jurors."[44] Although the operation of the courts in Nevis and St Kitts was affected by vested interests, this problem was not specific to them and did not cause merchants to avoid them.

Metropolitan merchants were not at the mercy of the planters and relied on networks of friends and business associates to carry out their trade across the Atlantic. Their

[41] J. M. Beattie, *Crime and the courts in England, 1660-1800* (Oxford, 1986); Jim Phillips, "Halifax Juries in the Eighteenth Century", in Greg T. Smith, Allyson N. May & Simon Devereaux (eds.), *Criminal Justice in the Old World and the New: Essays in Honour of J.M. Beattie* (Toronto, 1998), pp. 135-182; Norma Landau (ed.), *Law, Crime and English Society, 1660*-1830 (Cambridge, 2002); Peter King, "Decision-Makers and Decision Making in the English Criminal Law, 1750-1800", *Historical Journal* 27 (1984): 25-58; D. Hay "The Meanings of the Criminal Law in Quebec 1764-1774", in L.A. Knafla (ed.), *Crime and Criminal Justice in Europe and Canada (*Waterloo, 1981), pp. 77-110.

[42] Jurors were required to own £10 a year in freehold, copyhold, tenements or rents, or a long leasehold of £20 a year, but the list of suitable candidates was large than the actual number of jurors selected, who tended to belong to the socio-economic elite, in Jim Phillips, "Halifax Juries in the Eighteenth Century", in Greg T. Smith, Allyson N. May & Simon Devereaux (eds.), *Criminal Justice in the Old World and the New: Essays in Honour of J.M. Beattie* (Toronto, 1998), p. 151.

[43] J. M. Beattie, *Crime and the courts in England, 1660-1800* (Oxford, 1986), p. 320-27; P. J. R. King, "Illiterate plebeians, easily misled': Jury composition, experience and behaviour in Essex, 1735-1815", in J.S. Cockburn and T.A. Green (eds.), *Twelve good men and true: the criminal trial jury in England, 1200-1800* (Princeton, 1988), p. 345.

[44] Clinton W. Francis, "Practice, Strategy and Institution: Debt Collection in the English Common-Law Courts, 1740-1840", *Northwestern University Law Review* 80 (1986): 818.

knowledge of local circumstances and figures was a prerequisite to them entering a given market. John Pinney, although not born and bred in Nevis, had years of experience as a planter there behind him when he set up his commission firm in Bristol. This certainly gave him the legitimacy to prosecute in Nevis, where he benefited from local support and acquaintances.[45] By contrast, he was not familiar with the trading community in Tobago, and when he prosecuted for the repayment of a bond, the lawsuit turned out to be lengthy and complicated. The first judgement was rendered in 1812 and was in favour of John Pinney. It was however overturned by a court of error, possibly because as Pares suggests, "one of the parties sat as a judge in that court."[46] John Pinney then appealed to England and the case continued until the parties in Tobago abandoned it in 1820 and paid the £5,560 overdue.

C. The impact of the 1732 Debt Recovery Act

1. Writs of execution and legal enforcement

The sample for cases brought by metropolitan firms between 1778 and 1803 contains 27 lawsuits in 25 years. Thirteen firms were involved as plaintiffs, suing a total of nineteen defendants. This sample is neither exhaustive nor random. The records for the courts of King's Bench and Common Pleas survive only partially in the form of the rule books. It is therefore difficult estimate whether the rule books contain the totality of all cases commenced in the court of King's Bench and Common Pleas. Only the firms involved in the commission trade have been selected.[47] Cases which concerned planters residing in England have been consequently been excluded. Some cases involving metropolitan firms may however been missed, as some lawsuits may have been conducted by

[45] John Pinney had a long experience of the Nevis courts, having as a planter acted as attorneys for the factor Mills & Swanston in the 1770's. As a planter, he also sued Samuel Woodley in a plea of trespass in 1780, and Roger Pemberton in a plea of detinue for £ 3,000 money of the island worth of goods in 1781, in King's Bench and Common Pleas records, 1779-1786.
[46] Pares, *A West India Fortune* (London, 1956), p. 287.
[47] Plaintiffs such as Christopher Rossiter, a London taylor, and Charles Thomas, a "hatter and hosier" also from London, have accordingly been excluded from the sample, King's Bench and Common Pleas Records, 1778-1785.

attorneys in the name of metropolitan factors without the latter being mentioned and will not have been identified as such. Records for the King's Bench and Common Pleas court in St Kitts only survive for the following fourteen years: 1779-1786 and 1790-95. During these years, twelve metropolitan firms and fourteen defendants were involved in lawsuits. The implication of metropolitan firms was low.[48] This seems to coincide with a downward trend in litigation observed in Britain the 18th century.[49] However, the presence of factors in the Nevis courts of justice: was also discrete in relative terms: out of the 132 cases recorded for 1779, only one concerned a well-established metropolitan factor, William Manning. This section examines possible explanations for this.

Most debt recovery lawsuits were either carried out as pleas of trespass, pleas of debt pr pleas of detinue. A plea of trespass on the case concerned trespass against anything, which may have been actionable and included a wide range of torts. More specifically, the plea of trespass was often used when claiming damages for a bill that had been protested. The plea of debt was a procedure used for the recovery of debts on bond or obligation, on promissory note or due by account. The plea of detinue was an action for the unlawful detention of goods. In the West Indies, it was generally used to claim a right to the possession of slaves and detinue allowed for the recovery of the specific chattel being withheld.

Powers of arrest were rarely used in Nevis and St Kitts, and the commissioners mentioned only two prisoners in the thirty years preceding the report. This contrasts with the situation in England, where for instance in 1825-26, 40% of all common-law suits used bailable process, corresponding to the arrest of the defendant.[50] In the sample studied, one case is found: Jacob Do Porto sued Edward Frith, a prisoner confined in the common

[48] Moreover, some firms entered into legal actions as executors and administrators of a deceased's estate, and not in their own name. This was for instance the case of Benjamin and Thomas Boddington.

[49] C. W. Brooks, "Interpersonal conflict and social tension: civil litigation in England, 1640-1830", in A. L. Beier, D. Cannadine and J.E. Rosenheim (eds.), *The First Modern Society* (Cambridge, 1989), pp. 357-99; also Henry Horwitz & Patrick Polden, "Continuity or change in the court of Chancery in the 17th and 18th centuries?", *Journal of British Studies* (1996), pp. 24-33.

[50] This is taken from the three common-law courts: King's Bench, Common Pleas and Exchequer of Pleas, in C.W. Francis, "Practice, Strategy, and Institution: Debt Collection in the English Common-Law Courts, 1740-1840," *Northwestern University Law Review* 80 (1986),: 810.

goal in July 1785 for a debt upon bond of £90 current. As in England, reforms in the shape of Insolvency Acts helped redress the unbalance in favour of the creditor and debtors were better able to protect themselves against imprisonment or debt. However, these changes alone cannot explain the low level of imprisonment for debt in Nevis. Similarly, absentee ownership does not account satisfactorily for this phenomenon, as powers of attorney explicitly stated the right representatives had "to sue, arrest, distrain, seize, sequestre, imprison and condemn and out of prison again to release, aquit, and discharge all persons and things whatsoever indebted" to the creditor.[51] In fact, the rare occurrence of jailed debtors in Nevis derived from the specificities of the West Indian legislation. The plaintiffs in Nevis or St Kitts had little incentive to use powers of arrest: having the person of the debtor seized prevented them from making a claim on the land and other possessions of the defendants. In the West Indies, metropolitan firms therefore preferred to use writs of *scire facias* and seize land and slaves as payment for their debts, which was permitted by the 1732 Debt Recovery Act.

There are several examples of the 1732 Debt Recovery Act being implements and debts successfully recovered on slaves and chattel. As a planter, John Pinney sued Samuel Woodley, described as "planter," in a plea of trespass for £700, as compensation (payment and interest for damage) for protested bills of exchange drawn on Mills and Swanston. The first bill of exchange was protested in March 1779, and the case filed in March 1780. Judgment was reached on 3rd April 1781 in favour of the plaintiff John Pinney.[52] On 23rd May 1783, the judgment was enforced by the Deputy Provost Marshal John Henry Clarke, and payment of the £700 together with £8.11 current money for the costs of the suit was obtained, "which said execution was levied on a sugar plantation (...) together with seventy four negroes (…) with the buildings and utensils thereunto belonging and due publication was made according to law for the sale of said sugar plantation, slaves, &c."[53]

[51] Andrew Hamilton to Clifton and Tyson, letter of attorney, 24/03/1784, Nevis deed record 1785-87.
[52] John Pinney vs. Samuel Woodley, King's Bench and Common Pleas court records, 1779-1792, fo. 64.
[53] Bill of sale of a plantation, Deed records, 1783-5, fo. 90.

Similarly, James Tyson of St Kitts, described as "merchant" successfully sued Roger Pemberton as administrator of all the possessions of Robert Pemberton of Nevis, described as "barrister-at-law" for £53.19.10 current money of the islands, and following a judgment in his favour, "all the estate right title and interest of the said Robert Pemberton of in and to the said premises were put up at public sale to the highest bidder in Charlestown."[54]

Although there are several examples of executions of judgments of this type whereby land, slaves and chattels would be seized and sold at a public auction to compensate the creditor, there were also limitations to this system. One of the main problems on Nevis was that debts that were recovered on seized land or goods sold at public auctions were repaid in produce. The parliamentary commissioners thus admitted that "goods bough at marshals sales, are paid for *in produce*, by direction of the Court Act; and such produce is not appraised, or taken at a fair valuation."[55] The commissioners also estimated the limited powers of enforcement of the court: "even specific agreements, for payment in specie (that is, money or cash,) cannot (…) be enforced by any means as the law now stands, or as it is constructed; except, perhaps in the court of Chancery; and, in certain very special cases, by virtue of the Acts of the island, Nos 305 and 306."[56] Rum and sugar were legal tender at public sales and these commodities were often overvalued, leading in turn an undervaluation of the possessions seized and a loss for the creditor. There was also little competition for these sales. Following the King's Bench judgment in favour of the plaintiff John Tyson in 1789, Roger Pemberton's estate and slaves were seized. Roger Pemberton was the administrator of the goods and chattel of his deceased Robert Pemberton, a barrister at law who had himself inherited from these at the death of

[54] Indenture between Roger Pemberton Bridgewater and Roger Pemberton following King's Bench judgment, deed record 1789-90, fo. 327-39.
[55] 1826-7 (36) Coms. Of Enquiry into Administration of Civil and Criminal Justice in W. Indies. Third Report (Antigua, Montserrat, Nevis, St Christopher's, Virgin Islands), p. 47..
[56] 1826-7 (36) Coms. Of Enquiry into Administration of Civil and Criminal Justice in W. Indies. Third Report (Antigua, Montserrat, Nevis, St Christopher's, Virgin Islands), p. 48.

his father William Pemberton. The highest bidder ended up being the defendant himself, Roger Pemberton, who bought the rights to his brother's estate.[57]

2. Informal agreements

Plaintiffs therefore often preferred to seek informal resolution of the conflict. In Nevis, 5 out of 27 cases were "discontinued," usually when the parties had reached an agreement outside court and declared themselves satisfied, and 5 others led to a "judgment by confession", when the debtor admitted to the debt and some arrangement between parties was reached. In St Kitts, 10 out of 24 cases were either "discontinued" or "withdrawn by consent of parties."[58] For instance, the plea of trespass for £5,000 sterling filed by Davis & Protheroe against John Tyson on 19th February 1785, was "discontinued by consent of parties on 10th May 1785."[59]

Informal agreements usually consisted in the payment of the debt by the remittance of bills of exchange or produce. When the assignees of Mills & Swanston, by the intermediary of William Beach their attorney, sued the executors of William Pemberton in a plea of debt upon bond for £12,400 sterling in 1785, the defendants confessed the debt and agreement was reached between the parties. It stated that "Mr [Robert] Pemberton on behalf of his brothers Edward Pemberton and William Butler Pemberton proposed to Mr Beach to suffer the actions of ejectment, detinue and on the bond to proceed to judgment and not to bring writ of error on either or to file a bill in chancery with writ of execution (...) unless there be a failure of the following conditions on the part of Mr Pemberton and his brothers." The clauses of the agreement consisted in "giv[ing] Mr Beach bills of lading for 50 hogsheads of sugar each (...) between this day and the 20th June next, (...) to givi[ing] him of the next year's crop bills of lading in like manner of 100 hogsheads of sugar (...)

[57] Indenture between Roger Pemberton Bridgewater and Roger Pemberton following King's Bench judgment, deed record 1789-90, fo 327-39.
[58] The outcome is unknown for 2 of the 25 cases. The sample contains the cases which involved a identifiable metropolitan firm as plaintiff during the period concerned.
[59] Davis & Protheroe vs. John Tyson, King's Bench and Common Pleas records St Kitts, 1783-6.

between the first day of March and 20th day of June 1786 and the like the succeeding year 1787 and in each succeeding year until the debt due from Mr Pemberton late father to the assignees of Mills and Swanston is fully paid."[60] Metropolitan factors had come to prefer payment in produce, in the form of so many hogsheads of sugar each year to bills of exchange which could be protested.

More rarely, judges could also request the intervention of a third-party in order to settle disputes. For instance, in July 1782, Cossley Saudners sued Job Powell in a plea of trespass upon the case for the sum of £144 money of the island due by account. The case is adjourned in August 1782 and reported to the March court, where it was eventually referred "to the arbitration of James Tobin, Esq, his answer to be returned into court or on before the 1st day of April next, which award shall stand as a judgment of court for so much money as the said arbitration shall award to be due to the said plaintiff from the defendant." James Tobin, after having "examined the above account," awarded the sum of £118.19 to the plaintiff Cossley Saunders.

Creditors had strong incentives to press for an agreement outside court, avoid execution of the judgment and the loathed public sales. However, it was also in the defendant's interest to do so, as a debt proved by bond almost always resulted in a judgment favourable to the plaintiff. The common law courts were seen as biased towards the creditor: not only was the outcome of lawsuits predictable, losers were also required to bear the costs of the lawsuit.[61] This was true of Nevis and St Kitts where all the cases that reached judgment were settled in the creditor's satisfaction.

D. The functions and purposes of the courts

1. Courts as a credible threat

[60] Assignees Mills & Swanston vs Executors William Pemberton, King's Bench and Common Pleas records, 1779-1786.
[61] Clinton W. Francis, "Practice, Strategy, and Institution: Debt Collection in the English Common-Law Courts, 1740-1840", *Northwestern University Law Review* 80 (1986): 810.

The preceding section highlights one of the functions of the courts: legal proceedings served as a threat. For instance, a Whitehaven merchant in the first half of the 18th century confessed to a correspondent that he used writs to "terrify", although he may not actually serve them.[62] A merchant could also decide not to execute a favourable judgment and use it as a compliance mechanism, being entitled to demand execution for the debt confessed whenever he chose.[63] In St Kitts during the period studied, seven cases out of 25 were listed as "judgment revived", one in 1785 bringing back a judgment of 1763.

The case between John Pinney and the West Indian merchants Podd and Huggins illustrates this. It resulted in a judgment by confession, which served as a compliance instrument. Hence, John Pinney wrote in 1795 to his attorney: "I am much surprised at Mr James Huggins' refusal of paying the cost of the suit against himself and Podd; if he perseveres in his refusal, after another application, he must not be surprised at my claiming my right in other business. His bill for £153 is not yet accepted."[64] The lawsuit he was referring to had taken place in 1785.

In cases of non-compliance, factors sought to use the pressure of kin and friends to settle the debt amicably and outside court. The Reverend William Jones, a client of Tobin & Pinney since 1784, when they had paid a bill of exchange, which his previous factor had declined, was heavily indebted to the firm, but in March 1800, John Pinney still made an attempt to recover his debt without a lawsuit, as is revealed in the firm's letterbook: "Mr Pinney is just returned from London having had an interview respecting your affairs both with your brother and Mr Hamilton. In consequence of which Mr R. Jones will write to you on the subject and on your complying with the undermentioned terms, and which in the

[62] Quoted by C. Churches, "Business at Law: Retrieving Commercial Dispute from Eighteenth Century Chancery," *The Historical Journal* 43 (2000): 940.
[63] Although a different legal instrument, warrants of attorneys, which concerned 37% of all Nevis cases, gave similar powers to the creditor.
[64] Letter to Williams, 1st August 1795, John Pinney Letterbook 9.

purpose of this letter to Mr Pinney, we have consented not to push the matter to an extremity."[65]

In this case, the firm had obtained an obligation and a mortgage from William Jones for a debt on bond of £8,000.[66] This loan initially to William Jones and Andrew Hamilton had been contracted for the purchase of land from Edward Parris together with 20 slaves. The mortgage had secured, contracted in 1795, had secured part of the purchase money, £6,000, at 5% interest.[67] In a letter to John Taylor, Tobin & Pinney had declared that "with respect to Mr William Jones' affairs, we can only say that we consider Mr Hamilton as collateral security for £2,000 and that we shall be glad to hear from you with earliest convenience the status which his own security stands."[68] We do not have the amount of Jones' debt in the firm's books at the time of the lawsuit in 1801, but he was one of the firm's largest debtors in 1796 when his balance showed a deficit of £2,362.18.10. Jones' debt seemed to have spiralled out of control at this stage, and the firm was at loss to explain how this situation had come to be. A year after the conciliatory letter to the Reverend Jones, negotiations were over and the firm was suing Jones for a debt on bond worth £8,000. However, this was the result of William Jones' death, who passed away at the end of February 1800.[69] This event certainly prompted creditors to come forward and obtain a judgment in due form, in order to establish one's priority over subsequent creditors. Faced with the prospect of uncooperative heirs and the threat of other claims coming forth, the firm had to sue.[70]

[65] Letter to Rev. Jones, 15th March 1800, Tobin, Pinney & Tobin Letterbook 40. C. Muldrew also stresses the role of kin and friend pressure to settle disputes informally in "Credits and the courts: debt litigation in a 17th century urban community," *Economic History Review* 46 (1993): 23-38.

[66] Jones William & Andrew Hamilton to Tobin & Pinney bonds, Deed records 1799-1801, fo. 97-99.

[67] Jones William to Tobin & Pinney mortgage, Deed records 1794-97, fo. 194-199.

[68] Letter to John Taylor, 23/11/1796, Tobin & Pinney Letterbook 39.

[69] Oliver, *Caribbeana being miscellaneous papers relating to the history, genealogy, topography, and antiquities of the British West Indies* (London, 1909-19), vol. 3.

[70] The necessity to sue also rose in cases of bankruptcy: bankrupt firms such as the Londoners Mills & Swanston and Lane Son & Fraser or Houstoun & Co from Glasgow were trying to recover their assets in the courts. Firms or individuals may also sue when pressed by their own creditors. Roger Pemberton sued the executors of the late William Pemberton for the sum of £146.18.4 money of the island and made clear that all the rights to William Pemberton's "estate, right, title, interest and demand" and benefits obtained by this lawsuit would be passed onto the Glasgow firm of William McDowall, Andrew Houston, James McDowall and Robert Houston, which also received a power of attorney from Roger Pemberton, allowing them "to sue and prosecute execution upon the said judgment and upon satisfaction, composition or agreement obtained," in Roger Pemberton vs. executors William Pemberton, King's Bench and Common Pleas court records, 1786-1822.

The recourse to reputation, social norms and the peer pressure of the community was important in settling disputes and searching for an arrangement.[71] Courts were thus used against people "outside" of the community, or at least "outside" merchants' trade and credit networks. This status of "outsider" is here understood in the sense described by Beattie, who, when writing about English rural courts, argued that "the decision to prosecute or not was likely to have been influenced by the personal relationship of the victim and the accused and their place in the village (...). In a small community, the informal sanctions (...) could easily have been as effective as a full-scale court case (...). In these circumstances an appeal to a magistrate might well be a last resort or the result of one too many offences, or might perhaps be reserved for an accused who was an outsider with no standing in the village that could be threatened by the alternative means of coercion."[72] For instance, John Pinney prosecuted Joseph Batle, "a free negro" for a debt of £35 on a promissory note and warrant of attorney in May 1789. [73] The amount of the debt is the second lowest in our sample. The "outsider" status of the defendant and the fact he did not belong to the merchant's credit or trade networks explain this prosecution.[74]

Despite this, the role of social norms and rules should not be overplayed. Traders' proximity to credit in their everyday dealings and the risks associated with trade certainly encouraged to understand the relationship between credit and reputation with greater flexibility.[75] According to Smail, although "non-elites were appropriating the forms and languages of an aristocratic honour," they had "to temper that honour with a healthy dose

[71] Muldrew, *Theeconomy of obligation: the culture of credit and social relations in early modern* England (New York, 1998); Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (Berkeley & Los Angeles, 1996); Ditz, "Shipwrecked; or, Masculinity Imperiled: Mercantile Representations of Failurew and the Gendered Self in Eighteenth-Century Philadelphia," *Journal of American History* 81 (1994): 51-80.
[72] J. M. Beattie, *Crime and the courts in England, 1660-1800* (Oxford, 1986), p. 8.
[73] John Pinney vs. Joseph Batle, King's Bench and Common Pleas records, 1785-1822.
[74] Merchants were also more likely to prosecute planters who belonged to other factors' clientele rather than their own; for example, John Pinney John Pinney vs. Edward Pemberton, King's Bench and Common Pleas records, 1779-1786. Edward Pemberton was a client of Neave & Willett, and later B. Boddington & Co. Tobin & Pinney sometimes supplied provisions to other firms' clients, which may explain how this debt was contracted.
[75] On the risks and problems faced by traders and the constraints placed on credit, see Hoppit, "The use and abuse of credit in eighteenth-century England," in McKendrick & Outhwaite (eds.), *Business Life and Public Policy: Essays in honour of D.C. Coleman* (Cambridge, 1986), p. 64-78.

of practicality."[76] Lawsuits were first of all agood indicator of a planter's financial situation, and as such, highly undesirable for the individuals concerned. For instance, in 1786, Tobin & Pinney explained to John Tyson that they refused to grant him an advance of £1,200 because they were "totally unacquainted with the situation of [his] resources."[77] However they cannot have ignored that John Tyson was the object of a lawsuit initiated in May 1785 by their Bristol counterparts and occasional business partners Davis and Protheroe. They fitted out ships together and the plea of trespass on the case for £5,000 against John Tyson must have been discussed in Bristol coffee houses and counting houses.[78] (*check same John Tyson)* This was repeated a couple of years later. Philip Protheroe and Robert Claxton sued George Webbe Daniell for £2,000 sterling due by bond in January 1787.[79] In 1789, Tobin & Pinney declined a connection with the defendant, arguing in February 1789, that "from our intimacy with the Gentlemen you are already connected with here, we sincerely hope there will be no occasion for interference towards the support of your credit" and added that "circumstances we fear we have are more liable to give offence than other Gentlemen in the same line by declining to enter into engagements, which seem to have been proposed to us more as friends than as merchants. On terms likely to be equally beneficial to both parties, we shall always be ready and willing to extend our connections, to a mean of your understanding, we trust we may be thus free without the least feat of giving offence."[80]

The stigma of legal prosecution seem to have been limited in Nevisian society, and most of its members had been involved in legal procedures at one point or another in time.

2. The role of the courts: securing mortgages

If we look closely at John Pinney's lawsuits, we find that these rarely involved his clients. The one exception was the Reverend Jones, and in this case again, the firm sued the administrators and executors of his will rather than him. Other cases involved "outsiders" to the firm's network or local West Indian firms.[81] These figured prominently in the figured

[76] Smail, "Credit, risk, and Honor in Eighteenth-Century Commerce," *Journal of British Studies*, 44 (2005), p. 454.
[77] Tobin & Pinney Letterbook 37, Letter to John Tyson, 04/09/1786.
[78] Davis & Protheroe vs. John Tyson, Kings' Bench and Common Pleas records 1779-1792.
[79] Protheroe & Claxton vs. George Webbe Daniel, Kings' Bench and Common Pleas records 1779-1792.
[80] Letter to George Webbe Daniell, 10/02/1789, Tobin & Pinney Letterbook 37.
[81] Podd & Huggins & Arthurton Jr.

prominently in the King's Bench and Common Pleas court. Their debts were usually trade debts and held on bond.[82]

Metropolitan firms did however use formal mechanisms with their clients, but they preferred to secure mortgages as securities for debts rather than bonds. This constitutes another reason why local West Indian firms figured prominently amongst defendants for debts on bonds in the courts of King's Bench and Common Pleas: they were less likely to give land securities for debts than planters. One of the advantages of mortgages was the almost automatic procedure for enforcement in Chancery courts. It also enabled merchants to avoid the disadvantageous sale that resulted from the execution of debt recovery on a bond and allowed for the possession of the land and slaves.

The indenture of lease between George Forbes and Menzies Baillie and William Pocok of London, "merchants and partners," contracted on 12th November 1789, served as security for a debt of £4,000 sterling George Forbes owed his factors: "for securing the payment whereof the said George Forbes hath agreed to assign the said leased plantation and premises unto them the said Menzies Baillie and William Pocock."[83]

The last case involving John Pinney also shows that mortgages were the preferred means of coercing debtors and clients. Other legal instruments and procedures were mainly taken as the means to gain land securities for their land, for instance through informal agreements outside court. This case concerned Webbe Hobson of St Kitts, who was sued for a debt of £23,000 sterling due by bond and warrant of attorney, dated 29th July 1790. Webbe Hobson was not a client of the firm but had taken over John Symonds' plantation, which was already mortgaged twice to John Pinney. The mortgage was consolidated in 1789 between John Pinney and Webbe Hobson, but this had proved insufficient to secure the repayment of the debt or even the interests due.. The judgment was against Webbe Hobson on the 4th March 1794 "by virtue of the foregoing bond and warrant of attorney the

[82] Debts due by account or "contract debts" hardly figure in the sample. The absence of "proof" made them harder to recover in a common-law court.
[83] Indenture Forves to Baillie & Pocock, Deed records 1789-90, fo. 364-72.

due execution thereof being proved by Charles Ellery, the subscribing witness thereto", signed by John Pinney's attorney John Taylor. In June 1794, the consolidated debt owed by Webbe Hobson appeared to amount to £15,000 sterling and following the non-payment of £3,500 required by John Pinney, Webbe Hobson relinquished his rights to the mortgaged plantations, now "in the quiet and peaceable possession" of John Pinney.[84] The deed records do not specify whether this followed the court order, or whether this was the result of a settlement outside court.John Taylor could then declare on John Pinney's behalf on 1st May 1798, "I do hereby acknowledge to have received full satisfaction of the above judgment."[85]

Chancery court records for Nevis and St Kitts do not survive and we cannot determine how frequent these cases were. Pares indicates that mortgage foreclosures were more frequent on the 1820's, and that John Pinney only acquired one small estate this way.[86] In this sense, mortgages were also used as a threat and as a compliance instrument. An example is provided by John Pinney's letter to his attorney, James Williams on 31st January 1801, regarding Brazier's affairs:[87] "In regard to my own business with Mr Brazier, (...) I conceive he will be able to do and what I must insist on being done (...) Yet having a sincere welfare of the family and feeling of his situation, if he appropriates a sufficient load of sugar or provides any other fund, so as to leave only the principal sum due, on the mortgage of the 10th December next, you will then receive his bills for the following sum."

Conclusion

This study found that the problems inherent to the common-law courts of civil justice in Nevis and St Kitts were similar to those in Britain. The lack of formal training was

[84] Conveyance Webbe Hobson to John Pinney, 16/06/1794, Deed records, 1794-97, fo. 472.
[85] John Pinney vs. Webbe Hobson, King's Bench and Common Pleas records, 1785-1822.
[86] R. Pares, *A West India Fortune* (London, 1956). There is evidence in the deed records of these mortgages although, according to Pares, most of the foreclosures would actually take place in the later period.
[87] Brazier's mortgage was indebted to Tobin & Pinney, and this letter follows an incident when two of Brazier's bills of exchange have been protested, for a total of £ 1954-13-10, Letter to James Williams, 31st January 1801, John Pinney Letterbook.

compensated by practical experience and repeat service. Delays and costs represented a hindrance, but were of a similar nature to those in Britain. Moreover, costs should not have been prohibitive to the creditor as defendants usually borne them. Delays were reduced by the recourse to warrant of attorneys. Lastly, the planter class dominated the courts, but the control of the judicial institutions by the local elite was not a West Indian specificity. Merchants could also rely on local networks of support to have their voice heard. Therefore, recriminations about the inefficiency, weakness or level of corruption of legal institutions seemed relatively undeserved. Yet, metropolitan merchants sparingly used the court system.

One major difference between the use of the court in Britain and in Nevis and St Kitts laid in the level of arrests. The disposals of the 1732 Debt Recovery Act, which only applied to colonial America, meant that metropolitan merchants derived greater benefits from having the land, chattels and slaves of the debtor's seized rather than his or her person. Yet, the 1732 Debt Recovery Act cannot have made a major contribution to the British trade, as the public sales it occasioned were disadvantageous to creditors. Merchants tried to avoid executing judgments and it was more advantageous for both parties to try and settle their disputes outside court, using informal enforcement mechanisms. This may explain why metropolitan factors had more difficulties suing in islands where they did not have a pre-established network.

The legal system had several functions. First, it was used as a threat. This threat was credible as the system was biased in favour of the creditor. It also served to control those debtors outside the usual credit and trade networks. As far as metropolitan firms were involved, it also had a crucial role in securing mortgages and allowing merchants to receive land as securities for their loans. This was by far the preferred means of coercion in the West Indies and it explains why so few cases were brought in the King's Bench and Common Pleas court: planters had to comply with their factors' demands or lose their estates and sources of revenues in Chancery courts.