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Merchant Capital, the State, and Labour in a British Colony: Servant-Master Relations and Capital Accumulation in Newfoundland's Northeast-Coast Fishery, 1775-1799

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Résumé de l'article

La lutte des classes au sein des pêcheries de Terre-Neuve, à la fin du dix-huitième siècle, présente un cas privilégié pour l'étude des relations entre capital marchand et travail salarié, dans le secteur de l'extraction de matières premières, et dans le contexte d'une jeune colonie. Cet article met à profit une version amendée de la théorie de laproduction de matières premières ("staples"), qui jette un éclairage renouvelé sur le rôle des rapports de classe et des structures institutionnelles dans l'évolution à long terme de ce type de production. Il montre que les politiques britanniques de réglementation des salaires, liées à la protection des pêches migratoires, placèrent les maîtres locaux, qui utilisaient le travail salarié de façon extensive, dans l'impasse. Un examen des archives judiciaires fait découvrir en effet que les engagés purent utiliser cette même loi pour empêcher que leurs maîtres ne diminuent le montant du salaire dû à la fin de la saison des pêches, dans les cas où leurs patrons tentaient soit d'ignorer le contrat obligatoire conclu avant la saison, soit d'ajouter aléatoirement un montant à leur acompte. Les poursuites de ces engagés se soldèrent par un remarquable succès, quoique moindre que celui des serviteurs accusant leurs maîtres de négligence. En étendant ainsi la portée de la loi salariale au-delà des limites prévues par ses auteurs britanniques, les engagés forcèrent progressivement leurs maîtres à ne compter que sur une main-d'oeuvre familiale. Ce sont ces luttes entre employés salariés et employeurs, plutôt que le conservatisme des marchands comme tel, qui contribuèrent à l'établissement de la longue domination des entreprises familiales.

Merchant Capital, the State, and Labour in a British Colony: Servant-Master Relations and Capital Accumulation in Newfoundland's Northeast-Coast Fishery, 1775-1799

SEAN T. CADIGAN

Résumé

This paper uses a case study of class struggle in the late-eighteenth-century Newfoundland fishery to examine the relationship between merchant capital and the employment of wage labour in staple production in early colonial development. Using a modified version of the staple model which emphasises the role of the class relations and institutional structures of staple industries on long-term development, it finds that British regulation of wages to protect the migratory fishery stymied the extensive employment of wage labour by resident planters. Evidence drawn from court records suggests that fishing servants used the law to prevent erosion of wages due from planters at the end of a fishing season by ignoring mandatory preseason contracts or account overcharges. Servants enjoyed less, but still formidable, success in winning suits brought about by masters for neglect. By using wage law beyond the intentions of its British makers, servants forced planters increasingly to rely on family labour rather than wage labour. The struggles of wage labourers with their employers, rather than merchant conservatism as such, contributed to Newfoundland's long-term domination by merchant truck with fishing families.

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An extensive historiography attributes an important role to merchant capital in the development of American colonial societies. Much of this literature debates the role of merchants in harnessing the unfree labour of these societies to an expanding global capitalism and in increasing the wealth of metropolitan capitalists through mechanisms of unequal exchange in export-based industries.[1] Recent work on merchants in the early development of the British North American colonies rejects any easy assumptions about inherent merchant hostility to economic and social diversification which might threaten their hegemony built on the staple trade. Such new interpretations suggest that merchants in some regions encouraged increasingly free indigenous market relations between wage labour and capital, thereby promoting colonial transitions to industrial capitalism. In other regions, on the other hand, merchants proved to be "parasitic and static with no transforming effect on labour."[2]

1. This literature is too large for extensive citation. The standard works begin with Maurice Dobb's *Studies in the Development of Capitalism* (1947, rep. New York, 1963), which sparked the transition debate. This debate is summarised in Rodney Hilton, ed., *The Transition from Feudalism to Capitalism* (London, 1976). The transition debate revived in response to the work of Robert Brenner, collected in T. H. Aston and C. H. E. Philpin, eds., *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre-industrial Europe* (Cambridge, 1976). Robert Brenner is a principal in debates over the role of merchants in colonial development which emerged from the work of dependency theorists. His "The Origins of Capitalist Development: a Critique of Neo-Smithian Marxism," *New Left Review* 104 (1977): 25-93, along with Elizabeth Fox-Genovese and Eugene D. Genovese's *Fruits of Merchant Capital: Slavery and Bourgeois Property in the Rise and Expansion of Capitalism*, were important denials of the positive role of merchants in colonial capitalist expansion. The objects of their collective criticisms are André Gunder Frank's *World Accumulation 1492-1789* (New York, 1979) and his *Dependent Accumulation and Underdevelopment* (New York, 1979). Brenner and Fox-Genovese and Genovese also criticise Immanuel Wallerstein's *The Modern World-System, I: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (London, 1974), and his *The Modern World System, II: Mercantilism and the Consolidation of the European World-Economy, 1600-1750* (London, 1980). Extensive reviews of a related literature can be found in Ian Roxborough, *Theories of Underdevelopment* (London, 1979) and the more recent work of Robert Miles, *Capitalism and Unfree Labour: Anomaly or Necessity?* (London, 1987).
2. See the essays collected in Rosemary E. Ommer, ed., *Merchant Credit and Labour Strategies in Historical Perspective* (Fredericton, 1990), but particularly Ommer's "Introduction," 9-10.

Merchants thus bore no necessary ill will to the emergence of free labour in colonial settings, but did remain dominant in the class formation of those colonies which experienced little mature proletarianisation. It would be easy to infer that merchants themselves were directly responsible for this state of affairs, but such an assumption must be reevaluated, particularly in the light of the apparently ambiguous role merchant capital has played in early colonial social transformations. Perhaps no better testing ground for this purpose are case studies drawn from the communities based on the British North American Atlantic fisheries, which were dominated by merchant capital well into the twentieth century. The Newfoundland case is particularly illuminating because the late-eighteenth century witnessed the decline of extensive employment of wage labour in the migratory fishery, and the rise of a resident fishery dominated by household production and family labour. A modified version of the staple model which emphasises the influence of class relations and institutional structures of staple industries on long-term development helps to explain why Newfoundland seemingly eliminated the wage system in favour of merchants' truck with fishing families.[3]

One institutional structure dominated the relations of production in the late-eighteenth-century Newfoundland northeast-coast inshore cod fishery: the enforcement by the courts of the wage lien of Palliser's Act, passed in 1775. This legislation represented the British state's attempt to ensure that a domestic migratory fishery to Newfoundland would continue to encourage the growth of British trade and manufactures as opposed to the development of a resident fishery at Newfoundland exploited by colonists for their own advantage. While Palliser's Act failed to preserve the migratory fishery, it did prove to be an impediment to capital accumulation through the employment of labour on wages by northeast-coast planters, the resident fish producers. Neither staple determinism nor merchants' conservatism accounts for the decline of wage labour in the fishery. Legal structures originating in the state's attempt to regulate the cod fishery had considerable influence in Newfoundland history through the struggles of fishing servants. By insisting that the courts enforce wage payments according to the terms of Palliser's Act, even when war disrupted the migratory fishery, servants shaped the impact of the law in ways different from those intended by its makers. In the long run, planters turned to family labour rather than wage labour in the production of the cod staple.

3. The version of the staple model which this paper builds on is that advanced by Rosemary E. Ommer. The problem of the cod fishery as a staple trade, as Ommer's recent work on the Gaspé points out, has long been considered only in terms of resource endowment, export markets, and linkage effects. Ommer pushes the staple model beyond these conceptual limits by inviting students of the eastern-Canadian fishery to consider the institutional structures which affected the development of the Gaspé fish trade. Ommer's study of the Gaspé is directly concerned with the social and economic relations of production in the cod fishery. Nothing was inevitable about Gaspé underdevelopment: it was the organisation of the Gaspé fish trade by Jersey merchant capitalists within a British imperial context which insured that the wealth and industrial spin-offs generated by the staple trade would accrue to the Jersey metropole. The cod staple as a resource did not determine that the linkages of the cod fishery would not be developed in the Gaspé, but the motives of Jersey capitalists and the British state did. See Rosemary E. Ommer, *From Outpost to Outport: A Structural Analysis of the Jersey-Gaspé Cod Fishery, 1767-1886* (Montréal, 1991), 190-99.

Palliser's Act (15 Geo. III, cap. 31) alone regulated the manner in which seamen and fishermen could be employed in the Newfoundland fishery. The British Board of Trade sponsored the act in 1775 to revive a dying migratory fishery by protecting the wages of servants who temporarily migrated from Great Britain to work in the Newfoundland fishery. Since the Board of Trade did not want to encourage the growth of a wage-based resident fishery at Newfoundland, the act specifically provided that anyone employing seamen or fishermen in the Newfoundland trade must prefix wages in a written contract with their servants, reserving up to forty shillings of the servants' wages for payment of his passage home at the end of the fishing season. While in Newfoundland, servants were not to receive more than half their wages in goods, liquor, or money; the employers would pay the remainder in good bills of exchange drawn on British merchants when the servants returned home. Palliser's Act fined planters ten pounds for every refusal to pay servants' wages, gave servants first lien on any fish planters traded to their merchants before wage settlements, and limited pay deductions for servants' negligence to two days' wages for every one day neglected.[4]

The works of Steven Antler and Gerald Sider suggest that Palliser's Act actually encouraged the development of a proto-capitalist resident fishery in Newfoundland. Antler first suggested that Palliser's Act secured the development of a nascent capitalist planter fishery by creating the wage and lien system. Unlike producers in the shares- or household-based fishery, he argued, planters had economic incentives to improve productivity through investment in the physical improvements of the fishery. Any increases in productivity translated automatically into increases in profits because labourers had no means by which they could take any part of that increased productivity as their own. On the basis of such profit and wage labour, Newfoundland's capitalist development began. Furthermore, the development of a local price system increasingly freed planters from the need for merchant credit. Merchants, eventually worried about losing their dominant role in the fish trade, used their influence over the courts of Newfoundland from the 1820s to the 1840s to strike down the wages and lien system. Class differentiation in fish production halted, leaving Newfoundland with only small households relying on family labour to catch and cure fish in return for trade in truck to merchants.[5]

Sider's analysis does more justice to the subtlety of the transition in the nineteenth-century Newfoundland fishery. In Sider's work, planters emerged as resident small-boat owners who hired labour using the credit advanced by fish merchants. Planters were masters possessing capital insufficient to guarantee wages or purchase provisions for themselves and their crew should a fishing season fail. They were the middlemen for merchants, dependent from the beginning of the resident fishery on the credit of merchant capital to hire a few servants to aid their fishery. In good years, planters might realise a profit, but in bad years their efforts were dissipated in the obligations to servants and merchants imposed by the provisions of Palliser's Act.

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4. Newfoundland and Labrador. Provincial Archives (PANL), P1/5, Governor Sir Thomas Duckworth Papers, Micro. Reel 35.5, M-3176, reference copy of 15 Geo. III, cap. 31, 547-72.

5. Steven Antler, "Colonial Exploitation and Economic Stagnation in Nineteenth Century Newfoundland," PhD diss., University of Connecticut, 1975, 28-78.

A crucial part of Sider's larger arguments about the strength and pervasiveness of merchant capital in Newfoundland society is a demonstration that merchants subverted nascent capitalist production based on the wages and lien system. Palliser's Act solved the problem of planters' need to guarantee wage payment by allowing servants the first lien on any fish the planter delivered to his supplying merchant. Before the merchant or planter realised any income from the sale of the fish, servants' wages had to be paid. The law of current supply governed servants' liens, providing a rudimentary form of labour discipline to replace planters' inability to tamper with the wage contract itself. Servants could only lay claims for their wages against the fish they actually caught in the current season. Servants had to produce enough fish to cover their wages in one season because they had no lien on planters' subsequent catches or on capital goods. Ignoring the limits to capital accumulation in a system that encouraged servants to produce no more than they would receive from their hirer, Sider suggested that fish merchants, for unexplored reasons, struck down the wage guarantees founded by Palliser's Act within the courts. Presumably, merchants grew tired of the complexities and expense of dealing with middlemen and opted for the more simplified and easily controlled use of truck with the fishing households formed out of the servant and ruined-planter leftovers from the Palliser's Act era.[6]

More recent work has begun to question the view that merchants undermined wage-labour production in the fishery. David A. Macdonald, for example, has disputed the contention that merchant truck with planters represented a form of exploitative unequal exchange. Truck, to Macdonald, served as a means by which merchants invested capital in the production of planters who, at least on the south coast, negotiated some of the terms of that credit and were not subject to conditions of simple monopsony.[7] Robert Lewis has more directly addressed the issue of wage law, asserting that merchants used no significant change in the Newfoundland legal system during the nineteenth century to undermine proletarianisation in the fishery. Concentrating on Brigus, Conception Bay planters who pursued the seal and Labrador fisheries, Lewis particularly contradicted Antler's thesis by suggesting that planters continued to hire servants on combinations of shares or fixed wages. Fishing households only resorted to family work when other forms of labour utilisation failed.[8] While acknowledging these criticisms, Antler has maintained the essence of his thesis about the conservatism of merchant capital.[9]

Newfoundland society, particularly in Lewis's work, appears as a largely ahistorical phenomenon. Truck, family labour, and hired labour all seem to have continued without origin or change from the eighteenth to the twentieth centuries. Yet it has been well established that family labour, especially that of women and children in curing, but also of male relatives in the actual fishing, dominated the northeast-coast fishery

6. Gerald M. Sider, *Culture and Class in Anthropology and History: A Newfoundland Illustration* (Cambridge, 1986), 46-57.
7. David A. Macdonald, "They Cannot Pay Us in Money: Newman and Company and the Supplying System in the Newfoundland Fishery, 1850-1884," in Ommer, *Merchant Credit*, 114-28.
8. Robert M. Lewis, "The Survival of the Planters' Fishery in Nineteenth and Twentieth Century Newfoundland," in Ommer, *Merchant Credit*, 102-13.
9. Steven D. Antler, "Commentary," in Ommer, *Merchant Credit*, 129-34.

outside of the atypical environment of the combined seal and Labrador fisheries in Brigus. Patricia Thornton's work clearly demonstrates that the transition from a migratory ship fishery to a resident one in the Strait of Belle Isle involved planters choosing to rely on family labour and truck. Along with others, Thornton's work suggests that planters had been moving away from wage labour on the northeast coast with the growth of demographically denser settlement since the beginning of the nineteenth century.[10]

Lewis is correct in observing no significant change in class relations during the midnineteenth century, because the decline in the use of wage labour by planters began much earlier than suggested by Antler or Sider. This decline can be accounted for by looking at the problems planters encountered with their hired servants during the late-eighteenth century. Planter-servant relations were very specifically regulated by Palliser's Act, but these cannot be understood if the law is seen as being either irrelevant or an instrument used by merchants to undercut the industrialisation of the planter fishery. An examination of the manner in which servants resorted to the courts of the northeast coast to enforce the payment of their wages according to Palliser's Act does not support the Antler-Sider thesis that it ever encouraged proto-industrial capital accumulation in the fishery during the first decades of the nineteenth century. Instead, the act smothered the efforts of planters to accumulate capital during crucially formative years of the late-eighteenth century by allowing them little leeway in the contracts they formed with their hired servants. Constantly working under the obligations of a law designed to further imperial interests, planters found little room for capital accumulation within the confines of the wages and lien system.

Fishermen made cod a staple for merchant trade within the institutional matrix of the policies for imperial development of the British Board of Trade and Plantations. The board long regarded Newfoundland, not as an object of settlement, but as an industry, the cod fishery, which provided specie and a market for British manufactures through the sale of salt cod in Iberian markets. Although the Newfoundland cod fishery was never the nursery for seamen required by the British navy, official belief that it was further entrenched Board of Trade resistance to any developments which might suggest that the resident fishery was superseding the migratory fishery.[11] The Newfoundland cod trade was of much greater importance in the direct employment migratory fishing provided for the surplus labour of West-Country rural agricultural, artisanal, and la-

10. Patricia A. Thornton, "The Transition from the Migratory to the Resident Fishery in the Strait of Belle Isle," in Ommer, *Merchant Credit*, 138-66. See also Thornton's "The Demographic Base of Initial Permanent Settlement in the Strait of Belle Isle," and W. Gordon Handcock's "English Migration to Newfoundland," in *The Peopling of Newfoundland*, ed. John J. Mannion (St. John's, 1977), 158-72 and 15-48 respectively. Also of importance are Handcock's *Soe long as there comes noe women* (St. John's, 1989), 119-20 and C. Grant Head, *Eighteenth Century Newfoundland* (Toronto, 1976), 222-23. The later distinctiveness of the Conception Bay seal and Labrador fisheries is examined in Shannon Ryan, "The Newfoundland Cod Trade in the Nineteenth Century," MA thesis, Memorial University of Newfoundland, 1971, 48-57.

11. On the relationship between the Newfoundland cod fishery and the British navy in the eighteenth century, see Gerald S. Graham, "Fisheries and Sea Power," in *Historical Essays on the Atlantic Provinces*, ed. George Rawlyk (Toronto, 1967), 7-13.

bouring households. Even more important was Newfoundland's complete dependence on the West Country's artisan production of clothing, leather goods, foodstuffs, drink, fishing equipment, and cordage along with the nascent industries of ship-building and -refitting. In addition, West-Country merchants dominated the supply of Irish foodstuffs to the Newfoundland fishery.[12]

The migratory fishery did have several disadvantages which counterbalanced the economic linkages enjoyed by the West Country. Annual trips to Newfoundland caught merchants and fish producers in a cycle of winter refitting of ships and hiring of labour in the West Country, a late-March/April sailing for Newfoundland to avoid ice, and arrival at Newfoundland in mid-May for a scramble to find fishing rooms and to build or repair stages, flakes, and buildings. Only during a much-shortened fishing season from June through August could fishermen actually catch and cure fish, only to have to cut off the season abruptly to make the September-October rendezvous for a return trip to Europe to avoid the bad weather of a late-fall Atlantic crossing. Migration in the fishery also caused merchants and fishermen to leave behind their immovable shore-based capital each season without security or protection. The transatlantic fishery was also vulnerable to the depredations of England's enemies in the many wars of the eighteenth century.[13]

Settlement at Newfoundland became the West-Country merchants' solution to the problems of the migratory fishery. As early as the seventeenth century, merchants from London and Bristol supported proprietary colony schemes in the belief that a resident fishery at Newfoundland would lengthen the fishing season, cut down on the risks of transatlantic crossings, allow fish to be stored at Newfoundland to await better market conditions in Europe, and allow fish producers to lower the overhead costs of the fishery by finding some of their own subsistence in local cultivation and timber resources. West-Country merchants never accepted the proprietary schemes because of their fear that a resident fishing population would not necessarily look to West-Country trade to meet its needs. Nevertheless, these merchants could accept limited residence by planters to take advantage of a longer fishing season and to allow wintering servants to maintain and protect shore facilities. The proprietary colonies failed because Newfoundland's landward resources could not support the colonial aspirations of the proprietors. By the early-eighteenth century, West-Country merchants in the migratory cod fishery coexisted with resident planters, objecting only to any attempts by residents to engross as private property areas of the Newfoundland shores required for the migratory fishery.[14]

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12. Keith Matthews, "History of the West of England-Newfoundland Fishery," PhD diss., Oxford University, 1968, 1-10; E. F. J. Mathews, "Economic History of Poole 1756-1815," PhD diss., University of London, 1958, 22-71.
13. Matthews, "West of England-Newfoundland Fishery," 14-21.
14. The manner in which the costs of settlement destroyed the competition of proprietary colonists with West-Country merchants is explored in Gillian T. Cell, *English Enterprise in Newfoundland 1577-1660* (Toronto, 1969), 53-95; the manner in which West-Country merchants learned the advantages of residence to the migratory fishery is developed in Head, *Eighteenth Century Newfoundland*, 13-78.

The growing reliance of West-Country merchants on a resident fishery throughout the eighteenth century came into conflict with both Board of Trade opposition to the growth of settlement in Newfoundland and merchants' own opposition to self-government for the colony. Merchants feared that a Newfoundland government might regulate the fishery in favour of residents through trade with the rest of British North America or, after the American Revolution, with the United States.[15] Yet, in their treatment of planters and servants, merchants began to create demand in Newfoundland for the very self-government they opposed.

West-Country merchants originally employed servants directly to fish in small boats on the Newfoundland inshore after arriving with their equipment from Great Britain each year. Some of those employed became small-boat owners themselves, hiring their own crews, paying a merchant to carry them out to Newfoundland for the fishing season, buying supplies from the merchant, and trading fish in return at season's end. Some of these small-boat owners, called bye boat keepers, often stayed year round in Newfoundland to take advantage of the longer fishing season, saving the costs of shipping their boats and equipment back to England and preserving their right by usage and occupancy to shore facilities. Those bye boat keepers who continued permanently in Newfoundland became planters, as did the descendants of the failed proprietary schemes.[16]

Planters brought out servants, who were supplied by contract from their merchants, usually by agreements covering two summers and one winter, to aid in their year-round exploitation of the cod fishery and its supplements in the seal fishery and subsistence agriculture. Servants came from families at all levels of the British producing classes, including crafts relating to ship services and agricultural and other artisanal households. Such servants were usually orphans or labour which the family could not make use of in its own production. By contractually joining the households of their masters in the Newfoundland fishery, servants often became residents by marrying into planters' families.[17] After 1739, war with Spain diminished the supply of servants from England, while famine and economic depression in Ireland led many Irish people to look for work. The Irish could find West-Country merchants eager to send them out as servants to the merchants' planters at Newfoundland. They came to dominate the migration of servants to Newfoundland throughout the rest of the eighteenth century.[18]

The problems which arose in the credit relationships among merchants, planters, and servants, particularly in labour discipline, forced colonial officials in Newfoundland and at the Board of Trade to deal with the growth of a resident fishery. Without local government, there was little effective regulation of the relationships among the three parties in the fishery. Merchants advanced credit to planters for the provisions and capital equipment they needed to begin the season. If catches or prices were poor, planters

15. Matthews, "West of England-Newfoundland Fishery," 217-324.
16. Shannon Ryan, *Fish Out of Water: The Newfoundland Saltfish Trade 1814-1914* (St. John's, 1986), 32-33. See also G. M. Story, W. J. Kirwin, and J. D. A. Widdowson, eds., *Dictionary of Newfoundland English* (Toronto, 1982), 382-83.
17. Handcock, *So longe as there comes noe women*, 73-144, 243-66.
18. Head, *Eighteenth Century Newfoundland*, 92-94.

might be tempted to sell their fish to another merchant should he offer slightly better prices than those of the planter's own merchant. To ensure a return on their credit, then, merchants had to seize their planters' fish quickly if they thought this situation might unfold. If this occurred, however, servants would no longer work because they had no hope of being paid at the end of the fishing season. Moreover, unpaid servants possessed no means to return home and imperial policy could not tolerate this threat to a well-trained supply of British seamen who were also consumers of British-made goods.[19]

Officials both in Great Britain and in Newfoundland gradually accepted residency, particularly after the disruption of the migratory fishery during the Seven Years' War. Though it hastened the decline of the migratory fishery, the American Revolution entrenched official opposition to the granting of civil government to Newfoundland, a place which might defy British imperial objectives by developing its resources and trade in its own interests as New England had done. Yet something had to be done to bring order to the relationships among merchants, planters, and servants. In response, the Board of Trade accepted the recommendations of former naval governor Sir Hugh Palliser, passing in 1775 the act which bears his name. British officials hoped that Palliser's Act would revive the migratory fishery, thereby removing the necessity for a government at Newfoundland, guaranteeing the fishery's stimulus to British manufactures, and supposedly preserving a supply of seamen for the navy. The act consequently focused on protecting servants from the rapacity of the credit system of the Newfoundland fishery by articulating the twin principles of a migratory ship fishery: enforce the payment of wages by any merchant who might seize a planter's fish and secure the return of seamen and fishermen employed in the fishery to Great Britain.[20] Palliser actually wished that all credit relationships formed among servants, planters, and merchants in Newfoundland be abolished in favour of ones framed in England, but his act required only that wage contracts encourage servants' return to England, even if agreed to in Newfoundland.[21]

In his 1779 condemnation of Palliser's Act, Newfoundland's Governor Edwards gave some idea of remuneration levels for servants and their employers in the fishery. Edwards concluded that, by safeguarding servants' wages, the act effectively ruined migratory boatkeepers by forcing them to honour preset contracts for high wages with their servants ranging from fifteen to twenty-four pounds for the season. The governor provided a schedule of costs and returns for the fishery to prove his point. A boatkeeper would have to pay £50 to rig and equip his shallop, £111 for his servants' wages, £48 for a season's provisions, and £32 for the salt to cure the proceeds of a good voyage of 350 quintals of fish. In return, the boatkeeper could anticipate to only £183.15.0 for the sale of his fish at the current market price of £0.10.6 per quintal, and £15 for the sale

19. John Reeves, *History of the Government of the Island of Newfoundland* (1793, rep. Wakefield, Eng., 1967), 78 and 136.
20. Matthews, "West of England-Newfoundland Trade," 381-453. A more concise discussion can be found in Keith Matthews, *Lectures on the History of Newfoundland 1500-1830* (St. John's, 1988), 96-128.
21. John E. Crowley, "Empire versus Truck: The Official Interpretation of Debt and Labour in the Eighteenth-Century Newfoundland Fishery," *Canadian Historical Review* 70:3 (1989): 311-36.

of his ton or so of cod oil. A boatkeeper would only have £198.15.0 in earnings to balance against £241 in costs for the fishing season.[22]

Two sources can be used to examine how servants actually used Palliser's Act to defend their interests against planters and merchants, the surviving minutes of the Court of Sessions and of the Surrogate Court for Harbour Grace, which had jurisdiction over all of Conception Bay.[23] A review of the total number of cases before the two courts suggests that wage disputes continued to be heard in the Court of Session throughout

Table 1
Nature of Cases Heard in the Surrogate Courts, 1787-97

Year	Wage Disputes	Servant Discipline	Account Overcharges	Rent/ Property Disputes	Debt	Other	TOTAL
1787	25	8	4	9	9	9	64
1788	1	0	0	4	1	12	18
1789	0	0	0	4	2	0	6
1790	0	0	0	3	0	0	3
1791	–	–	RECORDS MISSING	–	–	–	–
1792	1	0	0	1	16	5	23
1793	1	0	1	5	38	0	45
1794	2	0	0	9	58	6	75
1795	3	2	1	10	87	9	112
1796	0	0	0	10	52	4	66
1797	0	0	0	2	8	6	16
Total	**33**	**10**	**6**	**57**	**271**	**51**	**428**

Source: Newfoundland and Labrador. Provincial Archives (PANL), GN5/1/B/1, Minutes of the Surrogate Court, Box 1.

22. Memorial University of Newfoundland, Centre for Newfoundland Studies (CNS), microfilm, CO 194, B-676, v. 34, 1777-1779, F. 90-93 and 117: "Richard Edwards Esq. Governor and Commander-in-Chief of His Majesty's Island of Newfoundland. His Answer to the Several Articles of His Instructions for the Year 1779," and "Proclamation of Gov. Richard Edwards."

23. In the early years of Palliser's Act, wage disputes were heard by justices of the peace usually chosen from agents of merchant houses in the fishery. These justices sat in Courts of Session. During the 1780s, naval governors gave officers under their command surrogate authority to dispense summary justice in civil offences at Newfoundland outports. To redress the pro-merchant bias of the Courts of Session, Parliament passed a temporary judiciary act in 1791 (31 Geo. III, c. 29) establishing a supreme court under Chief Justice John Reeves to hear civil disputes in the island. Reeves' duty was to recommend changes for a more permanent judiciary act for Newfoundland. He suggested that a new judiciary be established in Newfoundland. Surrogate judges, assisted by one or two magistrates, should alone hold courts in the major outports to arbitrate civil disputes. These surrogate courts, under the appellant authority of the Supreme Court of Newfoundland at St. John's, were established by 33 Geo. III, c. 76 in 1793. Lewis A. Anspach, *A History of the Island of Newfoundland. . . .* (London, 1819), 215-23. Christopher English has recently illustrated in detail the often-confusing nature of the early Newfoundland judicial system in his "The Development of the Newfoundland Legal System to 1815," *Acadiensis* 20 (1990): 89-119.

Table 2
Nature of Cases in the Courts of Session, 1788-99

Year	Wage Disputes	Servant Discipline	Account Overcharges	Rent/ Property Disputes	Debt	Other	TOTAL
1788	7	3	0	3	2	5	20
1789	10	9	1	5	4	14	43
1790	23	1	6	4	6	12	52
1791	0	4	0	2	4	7	17
1792	–	–	RECORDS MISSING	–	–	–	–
1793	10	2	3	0	0	2	16
1794	9	0	0	4	3	6	23
1795	6	4	0	0	1	6	17
1796	2	1	4	0	0	3	10
1797	10	0	0	0	0	8	18
1798	1	2	0	0	0	5	8
1799	1	1	2	1	0	10	15
Total	**79**	**27**	**16**	**19**	**20**	**78**	**239**

Source: PANL, GN5/4/B/1, Minutes of the Courts of Session, Box 1.

the period 1788-99, while the number of wage disputes declined as the Surrogate Court heard more cases involving suits for debt between 1787 and 1797 (see Tables 1 and 2).

Servants almost always won in two of the three types of court cases they dominated, wage disputes and suits against their masters for account overcharges. Although still winning a sizeable number, servants were more likely to lose to their masters in cases involving discipline for the former's neglect (see Tables 3 and 4). Out of a total of thirty-three cases involving wage disputes from 1787 to 1797, surrogate judges decided against servants only once. Servants won four out of six suits against their masters for account overcharges. More dramatic were the sixty-four out of seventy-nine decisions in favour of servants made by Conception Bay's justices of the peace between 1788 and 1799. In all but one account overcharge case, the justices decided in favour of servants. Masters, on the other hand, won six out of ten disputes involving the discipline of their servants in the Surrogate Courts and nineteen out of twenty-seven in the Courts of Session.

WAGE SUITS

Servants used the Surrogate Court at Harbour Grace to ensure that their masters observed the letter of their prearranged wage and service agreements according to Palliser's Act.[24] Some — including Philip Remond, John Godfrey, and John Walsh — won cases against their masters for the payment of return passage fare to Great Britain according to the statute.[25] Many fishing servants who won their cases simply demanded that their masters

24. PANL, GN5/1/B/1, Surrogate Court Minutes, Box 1, 1787-1818, 1787-1788: Petition of Patrick Cochran to Edward Packenham, 19 September 1787. Cochran sued "his mistress" Eleanor Highland in 1787 because she short-paid him by a few shillings on his wages. The Surrogate ordered Highland to settle with Cochran immediately.

25. Ibid., Philip Remond and John Godfrey vs. their master Edward Norman of Jersey, 25 September 1787; John Walsh vs. his master James Caldwell, 4 October 1787.

Table 3
Decisions For or Against Servants Before the Surrogate Courts

	Wage Disputes			Servant Discipline			Account Overcharges		
Year	**For**	**Agst.**	**Total**	**For**	**Agst.**	**Total**	**For**	**Agst.**	**Total**
1787	24	1	25	3	5	8	3	1	4
1788	1	0	1	0	0	0	0	0	0
1789	0	0	0	0	0	0	0	0	0
1790	0	0	0	0	0	0	0	0	0
1791	–	–	–	RECORDS MISSING			–	–	–
1792	1	0	1	0	0	0	0	0	0
1793	1	0	1	0	0	0	0	1	1
1794	2	0	2	0	0	0	0	0	0
1795	3	0	3	1	1	2	1	0	1
1796	0	0	0	0	0	0	0	0	0
1797	0	0	0	0	0	0	0	0	0
TOTAL	**32**	**1**	**33**	**4**	**6**	**10**	**4**	**2**	**6**
% FOR	**97**			**40**			**67**		

Source: As for Table 1.

Table 4
Decisions For or Against Servants Before the Courts of Session

	Wage Disputes			Servant Discipline			Account Overcharges		
Year	**For**	**Agst.**	**Total**	**For**	**Agst.**	**Total**	**For**	**Agst.**	**Total**
1788	6	1	7	0	3	3	0	0	0
1789	6	4	10	4	5	9	1	0	1
1790	20	3	23	0	1	1	6	0	6
1791	0	0	0	0	4	4	0	0	0
1792	–	–	–	RECORDS MISSING			–	–	–
1793	9	1	10	0	2	2	3	0	3
1794	7	2	9	0	0	0	0	0	0
1795	4	2	6	3	1	4	0	0	0
1796	2	0	2	0	1	1	4	0	4
1797	8	2	10	0	0	0	0	0	0
1798	1	0	1	0	2	2	0	0	0
1799	1	0	1	1	0	1	1	1	2
TOTAL	**64**	**15**	**79**	**8**	**19**	**27**	**15**	**1**	**16**
% FOR	**81**			**30**			**94**		

Source: As for Table 2.

pay their wages at the end of the fishing season according to Palliser's Act, something which the Surrogate ordered done. In the 1787 case of David Cushan's suit against his master John Dowdle, for example, Dowdle made clear that he had not made enough from his fishing voyage to pay his servant's wages. The court ordered Dowdle's fishing

boat sold to pay his debt.[26] Even when court actions taken by servants for their wages were not unqualified successes — as when Surrogate Edward Packenham allowed planters John Pike of Carbonear and John Britt to deduct small sums for negligence from the wages of their servants J. Watsin and John Conner in 1787 — the court nevertheless observed the provisions of Palliser's Act by ordering the masters to pay the bulk of their outstanding wages.[27]

Masters who appeared in the Surrogate Court usually gave their servants half wages in credit for goods required during the fishing season, but they did not seem to either want or be able to pay outstanding balances for the remainder at season's end. Planters were more concerned to ensure that they paid their supplying merchants. Packenham insisted that planters could not deal with merchants as if their servants' wages could wait until they met the supplying merchants' bill. Thus, when J. Comeford, J. McGrath, and Andrew Hennebury complained that their master Thomas Burton "was sending off the fish from his room" without securing the payment of their wages, and Burton refused to do anything about it, Packenham ordered that Burton's fish be attached to pay his servants' wages.[28] Through suits in the Surrogate Courts, three other servants forced their masters to pay wages out of fish already sent to their supplying merchants.[29]

Surrogate Packenham also enforced servants' wage rights under Palliser's Act as a result of his investigation of servants' disputes with supplying merchants Newman and Roope of Dartmouth in 1787. Planters had given their fish to William Nile, agent for Newman and Roope, without making arrangements to have their servants paid. A total of fourteen servants sued Nile for payment of their wages out of the proceeds of their masters' fish and cod oil. In all cases except one (in which planter Patrick White proved that he had paid his servant), Surrogate Packenham ordered Nile to pay the wages as required by Palliser's Act.[30] Nile argued with Packenham that his employers had

26. Ibid., David Cushan vs. John Dowdle, 12 November 1787. The other six cases were Joseph Keary vs. his master Dennis Conners, 26 September 1787; Stephen Woodcock vs. his master Robert Morrisy, 1 October 1787; Timothy Falway vs. his master William Pike, Clown's Cove, 4 October 1787; Daniel Hisney vs. his master Henry Widenham, 20 October 1787; M. Donnovan, Ed. Fitzgerald, and others vs. William Keefe, 6 November 1787; M. Quinlan, John Meagher, and others vs. John Thomey, 6 November 1787.

27. Ibid., petition of J. Watsin to Edward Packenham, 19 September 1787 and petition of John Connor to Edward Packenham, 19 September 1787.

28. Ibid., J. Comeford, J.McGrath, and Andrew Hennebury vs. Thomas Burton, 25 September 1787. In a similar case that year, servant Mike Connors sued Lawrence Dunn, the merchant of his planter William Strachan, in 1787 because Strachan had turned over all his fish to Dunn without paying wages. Surrogate Packenham ordered Dunn to pay Connors' wages out of the proceeds from Strachan's fish. See the petition of Mike Connors to Edward Packenham, 25 September 1787.

29. Ibid., David Mahany vs. his master (unnamed), 4 October 1787; Mary Cole of Colliers vs. her master James Ellison, 12 October 1787; Thomas Stoke, servant of Nicholas Martin, vs. Thomas Power, 6 November 1787.

30. Ibid., Andrew Potts, Patrick Grace, and James Smith, servants of William Walsh, vs. William Nile, Port de Grave, 1 October 1787; Laurence Kough, E. Din, Thomas Bryan, James Downy, William Fitzgerald, and Michael Wise, servants of unnamed master, vs. Nile, 3 October 1787; John Brian vs. Nile, 4 October 1787; M. Courney, servant of Peter Quin, vs. Nile,

instructed him to take planters' fish and oil against the planters' own accounts, paying servants' wages only if enough remained after the payment of their debts. If the voyages could not meet the credit taken by planters, then the merchant had no intention of paying servants' wages.[31] Packenham ordered that the supplying merchant must meet servants' wages before they could credit any fish or oil to planters' accounts, and enforced this rule by attaching enough of Nile's fish and oil to pay wages as required by Palliser's Act.[32] Packenham felt that planters could not produce enough fish to meet servants' wages because they prearranged those wages at rates both "high and extravagant." Packenham claimed an interest in reducing wages to lower levels, but his rulings do not indicate that he actually did so. Palliser's Act forbade tampering with signed, written wage agreements.[33]

The Surrogate Courts heard few cases involving wage disputes after Packenham's decisions in the Nile case. Between 1792 and 1795, surrogates heard six cases, deciding for the servants in every one. The decline in the number of wage disputes does not necessarily indicate that servants no longer had trouble in receiving payment for their wages, but that the forum for dispute had shifted. The advent of the Napoleonic Wars finalised the disruption of the migratory fishery; the fishery at Newfoundland was almost totally a residential one by the last years of the eighteenth century. Resident servants had to have merchant credit to survive on a year-round basis in Newfoundland just as the planters did.[34] Wage disputes probably became submerged in the rapid increase of debt suits in the Surrogate Courts. While the minutes of debt cases provide little information about the nature of the debt or the adversaries, occasional glimpses of struggles over wages do emerge. In 1795, John Clements sued Henry Webber for an outstanding account balance due in 1789 of £11.15.10. Surrogate Ambrose Crofton found that Webber would not pay the account because he had been short-credited on wages. After Crofton adjusted the wages, Webber agreed to pay the account.[35]

Packenham's ruling in the Nile affair demonstrates that the manner in which Palliser's Act secured servants' prearranged wage contracts with planters effectively gave servants first lien on any fish planters might trade to their supplying merchants throughout the fishing season. This ensured that the planters' interest fell behind those, first of the servants and second of the merchants. Decisions made in the Courts of Session

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4 October 1787; Thomas McGrath vs. his master John Buchan, 4 October 1787; Edmund Power vs. Nile, 4 October 1787; Ann Brazill for her deceased son John Butler vs. Nile, 1 October 1787.

31. Ibid., statement of William Nile, 23 October 1787.
32. Ibid., order of Surrogate Edward Packenham to District Constables, 23 October 1787.
33. Ibid., statement of Edward Packenham, 31 October 1787.
34. Head, *Eighteenth Century Newfoundland*, 217-21; Handcock, *Soe long as there comes noe women*, 137 and 182.
35. PANL, GN5/1/B/1, Surrogate Court Minutes, Harbour Grace, Box 1, 1787-1818, 1793-1797: John Clements vs. Henry Webber, 7 May 1795. The other wage disputes are Box 1, 1789-1792, Maurice Savage vs. John Heffernan, 27 September 1792; Box 1, 1793-1797, Phillip Horton vs. Francis DeGruchy, 29 October 1793; Edmund Neil vs. John Fortune & Co., 1 December 1794; James Conway vs. John Gosse, 31 March 1794; Edmund Fitzgerald vs. James Macbraire, 35 March 1795.

confirm that Palliser's Act disadvantaged planters.[36] At the end of the fishing season in 1788, planter John Meadows of Bay de Verds refused to pay the contractually agreed wages to servant James Ryan, hired by Meadows in partnership with another planter named Cody. The Harbour Grace Court of Sessions issued a warrant "upon which Mr. Rolls [the person who received the fish and oil] paid the ballance [sic] of the account for wages due to the Complainant."[37] John Meadows could not secure any return to himself from his voyage until his merchant had satisfied the wage claims of Meadows' servants.

Servants' liens on their planters' supplying merchants did not oblige the latter merchants to pay the entire amount of servants' wages, only the amount which the sale of fish and oil would cover. A clear illustration of merchants' limited liability for servants' wages emerged in 1788 when the servants of planter William Rea sued his merchants, Kimber and Keefe, for refusing "to pay them the Balle. of their wages due to them Altho they had given the Complainants Security for so doing." The magistrates of the Court of Sessions investigated the matter and found that Kimber and Keefe had given security for the wages only on the understanding that Rea give them all the pro-

36. Like the Surrogate Courts, the Courts of Session heard a number of straightforward suits for wages by servants from their masters. The courts usually decided these suits in the servants' favour. See PANL, GN5/4/B/1, Court of Sessions Minutes, Harbour Grace, Box 1, 1788-1817, 1789-1790: Richard Ronan vs. his master John Ash, winning his wage balance due of £5.2.9, 20 October 1789. Further cases are contained in Box 1, 1790-1791: James Shehan vs. John Noel of Freshwater, 6 November 1790 (the court ruled that Noel had to pay his servant Shehan his wage balance of £6.10.0 minus 40 shillings in passage money to Ireland); Walter Dollar vs. John Clarke, 1 November 1790 (Dollar won his balance of £17 wages due); Patrick Healey vs. his master Thomas Fahey of Western Bay, 30 October 1790 (Fahey paid Healey his £5.17.6 wages due); John LeDoan vs. William Howell for £4.12.9 wages, 22 November 1790. Box 1, 1793-1797: John Heffernan for Simon Marshall vs. James Cotter, 11 November 1793; James Dalton and John Hamilton vs. Laurence Kean for wages totalling £18.13.6 minus 80 shillings in passage money to Ireland; Nicholas Power vs. Edward Mackey balance of wages due, 18 November 1793; Jonathan Smith vs. Patience Parsons, balance of wages due, 18 November 1793; Thomas Eagan vs. Quarry and Mullowney, balance of wages due minus £3 for losing a punt, 25 November 1793; Mansard Alcock vs. Henry Tucker, 27 January 1794; Sarah Ash vs. Jane Cooke, 27 January 1794; T. Delaney vs. J. Heffernan, 7 April 1794; John Cod vs. John Thomey, 5-6 May 1794; Patrick Fitzpatrick vs. James Mercer, 30 November 1795; William Macnamara vs. William Comers, 7 December 1795; Thomas Lombard vs. Thomas Dunn, 6 December 1796; Joseph Rogers vs. William Newman & Co., 11 December 1796; William Piddle vs. John Perchard, 6 November 1797; Samuel Pinguard vs. Mark Delaney, 16 November 1797; John Haley vs. B. Corban, 24 November 1798. A few cases involved a simple loss on the servant's part. See Box 1, 1788-90: Gormund vs. the estate of Keefe and Sons for wages, dismissed, 28 September 1789; James Ivory vs. John Clements, 20 October 1789 (Ivory claimed that he hired to Clements as a boatsmaster for £26 wages in the season of 1788, but received only 50 shillings per month. The court nonsuited Ivory when Clements produced a signed agreement to the latter effect). Box 1, 1793-99: Patrick Fitzpatrick vs. Roger Thomey, nonsuit for wages, 2 December 1793; John Shea vs. Matthew Kearney, 25 March 1794; William Brown vs. William Coglan, 23 November 1795; John Flemon vs. William Danson, 3 August 1795; William Daley vs. John Walsh and Co., 6 November 1797; Thomas Adams vs. John Clements, 24 November 1797.

37. Ibid., Box 1, 1788-1790: James Ryan vs. John Meadows, 29 September 1788.

ceeds of his voyage. Rea had actually given Kimber and Keefe only forty quintals of fish, while trading forty-eight quintals of fish and forty gallons of cod oil to other persons. The court judged that Kimber and Keefe should only pay one half the servants' wages, while Rea should pay the other half.[38] If merchants in positions similar to Kimber and Keefe could demonstrate that planters had not given them enough fish to secure wages, then the Courts of Session would order other property owned by planters sold to make up the difference, as well as to repay merchants' credit.[39] When the courts found that planters dealt with a number of merchants without securing servants' wages, magistrates ordered the merchants to secure wages rateably with the amount of fish received.[40]

The Court of Sessions was willing to limit planters' freedom to market their fish as they saw fit to secure servants' wages. It used such limits in 1790 when Daniel Moynehan brought a suit against his master, Martin Costelloe of Harbour Main, because the former felt that the latter was trying to avoid paying wages. Moynehan tried to stop Costelloe from selling the fish "to sundry persons without giving him security for the payment of his wages" but received "ill-treatment" from his master in so doing. The Court of Sessions ordered Costelloe to secure Moynehan's wages.[41]

Servants' liens on the supplying merchants for wages due from planters could themselves lead to wage disputes. In 1789, Michael Fahey, servant to John Bolan, sued Bolan's supplying merchant, John Lewis, because of an unspecified disagreement over how Lewis should pay the wages. Through court arbitration, Fahey agreed to take his wages half in bills of exchange and half in fish.[42] Merchants sometimes complained when a servant demanded payment of wages in cash instead of by credit, or about having to pay servants' wages when merchants took no part in authorising their planters to hire servants in the first place. While sympathising with such complaints, the Court of Sessions still insisted that merchants pay the wages of servants if they took fish and oil from their masters.[43]

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38. Ibid., servants of William Rea, unnamed, vs. Kimber and Keefe, 4 November 1788.
39. Ibid., Hays, McGrath, and Kennedy vs. William Prendergast, 13 December 1790; Patrick Gaul vs. David Whelan, 23 October 1790. In the same year, John Purcel had his property attached and sold to pay the nine pounds in wages he owed his servant Michael Cavanagh; see Cavanagh vs. Purcel, 4 November 1790. An earlier example is found in Box 1, 1788-1790: servants of Joseph Pynn vs. his estate, 15 December 1788. For other 1788 decisions which secured the wages of servants, see Michael Power vs. Richard Britt, 21 November 1788, and John Welsh vs. George Lambert, 21 November 1788.
40. Ibid., John Hudson vs. Hollett and Martin, 1 November 1790. In a similar case (Peter Burry and others vs. Walter Furlong & Co., 11 November 1790), merchant John Thomey proved that William Brick had taken fish from Furlong's room without paying his rateable share of the servants' wages. The court ordered Brick to pay the servants £5.15.0. Similar cases occurred in 1795: see Box 1, 1793-1799: sundry servants vs. Dwyer and Comer, 17 December 1795 and sundry servants vs. Corner and Hammonds, 7 December 1795.
41. Ibid., Daniel Moynehan vs. Martin Costelloe, 26 September 1790.
42. Ibid., Michael Fahey vs. John Lewis, 23 November 1789.
43. Ibid., Timothy Murphy vs. John Thomey, 29 October 1789 and Richard Walsh vs. William Henderson & Co., 20 October 1789.

At times, servants had to defend their wage rights under Palliser's Act when they simply got caught up in merchants' attempts to get some return on the credit they advanced to planters. Merchants occasionally seized planters' fish during the season when they feared that the planters' voyages might fail, or that fish prices might fall, without regard for the security of servants' wages. The Court of Sessions again enforced servants' wage claims, forcing merchants to pay servants out of the fish the former seized.[44] At other times, merchants simply refused to pay servants' wages even when the former acknowledged that they had received all of a planter's fish. Such a refusal prompted Thomas Ways to sue Benjamin Linthorne, agent to merchant John Green, in 1790 when Linthorne received all of his master's fish, but would not pay Ways' earnings of £13.3.0. The court ordered Linthorne to pay, but he refused until the court seized all of Green's cod oil.[45]

Linthorne's conflict with another servant illustrates how planters became caught in a squeeze between merchants and servants through wage disputes under Palliser's Act. Planter Nicholas Martin's servant, John Henley, agreed with Linthorne to ensure that all of Martin's fish went to the merchant's agent in return for wage security. Linthorne got all of Martin's fish but would not pay Henley's wages. The court ruled that Linthorne had to pay Henley but never spoke for the planter's interest in the proceeds of his voyage. The Court of Sessions simply ordered Linthorne to pay Henley's wages of £11.3.3.[46]

ACCOUNT OVERCHARGES

Planters tried to avoid the restraints of Palliser's Act through credit they extended to servants in the course of the fishing season. The act allowed masters to advance their servants up to one half of their wages in credit for the latter's clothing, food, and equipment needs during the fishing season. Servants such as Daniel Hisney had accounts with their planter-masters, just as planters had accounts with their supplying merchants.[47] Other servants might well have a direct account with their masters' supplying merchants.[48] Merchants recruited servants for their planters in Great Britain, thereby be-

44. PANL, GN5/4/B/1, Surrogate Court Minutes, Harbour Grace, Box 1, 1788-1817, 1790-1791: servant James Connery vs. merchant John Heffernan, 8 November 1790 and servant Martin Ryan vs. merchant's agent John Clarke, 11 November 1790.

45. PANL, GN5/4/B/1, Court of Sessions Minutes, Harbour Grace, Box 1, 1788-1817, 1790-1791: Thomas Ways vs. Benjamin Linthorne, 4 November 1790.

46. Ibid., Henley vs. Linthorne, 4 November 1790. In similar suits against merchant John LeViscount in 1793, the Court of Sessions forced him to pay servants' wages as he had received all their employers' fish and oil, while promising to secure wages. See ibid., Mark Joyce vs. George White, 18 November 1793, where White proved his supplying merchant LeViscount had the fish which was supposed to pay servants' wages; John Welsh & Co. vs. William Stapleton, 21 November 1793, where Stapleton proved the same as did White.

47. PANL, GN5/1/B/1, Surrogate Court Minutes, Harbour Grace, Box 1, 1787-1818, 1787-1788: Daniel Hisney vs. his master Henry Widenham, 20 October 1787. Hisney complained that Widenham would not give him a copy of his account so that Hisney might understand why his master refused to pay the balance of his wages.

48. Ibid., M. Courney vs. William Nile, 4 October 1787. Servant Courney did not directly bring suit against his master Peter Quinlan for his wages in 1787, but rather against William Nile, as agent for Quinlan's merchants, for refusing to pay Courney's account balance.

coming entangled in the relationships between the two. In 1788, servant Edward Malone complained that Peter Cummins, agent to a merchant named Clements, shipped him to serve Patrick McNamara. At the end of his service, Cummins gave Malone an order on Clements for the balance of his wages, but Clements refused to honour it, saying that "Mr. Cummins ship'd the petitioner contrary to his Orders." Surrogate Robert Reynolds ordered Cummins to pay Malone's wages immediately.[49]

Planters, however, could manipulate the prices of goods supplied to servants so that it would appear that planters did not owe their servants a wage balance at the end of their contract. Such price manipulations violated the provisions of Palliser's Act which stated that planters must reserve one half the servants' wages for payment at the end of the fishing season. A few cases indicating that planters used truck to avoid wage payments appeared in the records of the Surrogate Courts. The Surrogates usually agreed with servants when the latter complained that planters overcharged prices on their accounts to avoid paying wages. Surrogate Packenham readjusted prices and ordered planters to pay wages then due to servants.[50] Only in one case, that of David Hinesy, did a servant lose a suit against his master. The Surrogate judged Hinesy's complaint to be "litigenous and ill-founded."[51]

As in the Surrogate Court, servants' wage suits in the Court of Sessions sometimes indicated that planters tried to use price manipulations in accounts to minimise balances due to servants for wages. The manner in which a planter could use truck to evade paying wages is illustrated by Michael Tobin's suit against Richard Britt in 1794. Tobin served Britt as a fisherman for the summer of 1793, but managed to spend all of his wages in buying goods on credit from his master. On examining his account at the end of his service, Tobin objected to certain charges which he regarded as excessive. Britt promised to make up for these by giving Tobin a barrel of flour which never materialised. On hearing the case, the Court of Sessions ordered Britt to give Tobin the barrel of flour.[52] Servant Daniel McGrath was more blunt in the same year in his statement to the court about his mistress, Dinah White, "who had furnished him with an account much overcharged — and neglected to pay him the balance of his wages." The court ordered White to pay McGrath his wages due (£7.11.0) but to withhold forty shillings for McGrath's passage home.[53]

In 1797, fisherman James Francis sued his masters, John and Clement Noel, charging that "he served the defendants this present year, and being furnished with his acct. was therein much overcharged. The acct. being regulated agreeable to the established

49. Ibid., Edward Malone vs. Peter Cummins, 25 October 1788.
50. Ibid., servant Thomas Hennessey vs. his master M. Kennedy, 4 October 1787; servant William Elliot vs. his master William Cochran, 10 October 1787. Not all of the account overcharge disputes involved fishing servants. Jeremiah Donny, agent to merchants Keefe & Sons, sustained his contention that they had overcharged him by £34.6.5. See Jeremiah Donny vs. Keefe & Sons, 13 December 1787.
51. Ibid., David Hinesy vs. William Trapnell, 1 October 1787.
52. PANL, GN5/4/B/1, Court of Sessions Minutes, Harbour Grace, Box 1, 1788-1817, 1793-88: Michael Tobin vs. Richard Britt, 27 January 1794.
53. Ibid., Daniel McGrath vs. Dinah White, 3 November 1794. See a similar, but earlier, example in ibid., servant Phillip Hennebury vs. his master Thomas Top, 23 October 1790.

prices, there appeared a balance due therein to the pltf of £3.19.4.''[54] In Francis's case, as in others, the Court of Sessions readjusted planters' truck charges so that servants could claim outstanding wage balances.[55]

Price manipulations were such a concern to servants that they sometimes sued planters directly in the Court of Sessions to produce accounts for the court's examination, rather than trying to claim that planters owed a wage balance to them. John Loan sued his master, Charles Ivory of Carbonear, in 1790 asserting that he had been given "an Acct greatly overcharged, whereby his wages was all spent, & his said Employer refused to provide him a passage home." The court ordered Ivory to pay the passage money.[56] On examining a similar accusation against his employer, William Coughlan, in 1796, the Court of Sessions found in favour of servant Maurice Connell as "there appeared overcharges in the acct amounting to the sum of £2.13.4 and that a balance was due to the plaintiff amounting to the sum of Eleven Pounds Ten Shillings & four pence for which sum judgment was given. . . .''[57] Again, the Court of Sessions usually regulated prices in such account disputes, as it did in the case of John Kennedy in 1796: "the Servants of John Kennedy . . . complained that their master had overcharged them in sundry articles. The accounts being produced and regulated agreeable to the prices current between master and servant. Ordered that Kennedy their employer do pay the balance appearing due to them respectively.''[58] The Court of Sessions was not sympathetic to planters who used truck to avoid paying servants' wages.[59]

SUITS INVOLVING NEGLIGENCE

Charging their servants with neglect proved to be another tactic used by planters to avoid their wage obligations to fishing servants. The Surrogate Courts did not lend a sympathetic ear to planters who defended themselves against wage suits by claiming that servants' neglect deprived them of the right to their outstanding wage balances at season's end. Surrogate Packenham would not accept the claim of planter Thomas Burton in 1787 that the court was wrong in seizing his catch to satisfy a claim by his servants

54. Ibid., James Francis vs. John and Clement Noel, 30 October 1797.
55. Ibid., Patrick Byrn vs. Dalton and Forrestel, 6 November 1797; Robert Brown vs. John Young (Brown complained that his master Young took "up the whole of his Wages in goods at a very high price."), 24 November 1797; Daniel Ryan vs. John Clements, 24 November 1797; William Griggs vs. Richard Taylor, 24 November 1797; William Walsh vs. Patrick Carew, 24 November 1797.
56. Ibid., John Loan vs. Charles Ivory, 6 November 1790.
57. Ibid., Maurice Connell, 1 November 1796.
58. Ibid., servants of John Kennedy vs. Kennedy, 19 November 1796.
59. The remaining account overcharges disputes are found in ibid. and are as follows: Nicholas Jones vs. James King, 4 November 1790; William Crowder vs. Mr. Clark, 18 November 1790; Isaac Stephens vs. Michael Candy, 18 November 1790; Thomas Bryan vs. Mr. Clark, 18 November 1790; Edmund Barret vs. William Henderson, 6 December 1790. Ibid., Box 1, 1793-1799: John Anchor vs. John Heffernan, 14 November 1793; William Mayo vs. John Heffernan, 14 November 1793; John Brown vs. John Heffernan, 14 November 1793; Moses Clark vs. James Clark, 28 November 1796; John Butt vs. George Moors, 29 November 1796. Ibid., Box 1, 1799-1808: Earl vs. Cremp, 19 November 1799; John Byssom vs. Parsons, 9 December 1799.

for wages because they had neglected their work and did not deserve those wages. Packenham noted that Burton was insolvent and that the planter's charge of neglect was "manifestly designed to defraud the fishermen of their wages."[60] In other cases, the Surrogate refused to consider unproven allegations by planters of neglect on the part of their servants. Packenham regularly rejected such charges by planters and ordered employers to pay wages according to the provisons of Palliser's Act.[61]

The Surrogate judges, however, would allow planters to deduct from their servants' wages when they could prove neglect. James Snelgrove's charge that his boatmaster Daniel Crowley and midshipman David Cuchin had neglected their duty, for example, brought Surrogate assent to his deducting two guineas from their wages.[62] When planters could prove that their servants lost nets, damaged fishing boats, or perhaps lost a few days' labour to overindulgence in spirits, Surrogates throughout the 1780s and 1790s would allow masters to deduct the amount of damages from the servants' wages, but no more.[63]

Issues of neglect were often an undercurrent running through wage disputes in the Court of Sessions.[64] Deductions made by masters for servants' negligence led to actions there by servants for wages. Magistrates allowed planters to make only minimal deductions when the "negligence" of servants was due to illness: Richard Valentine was allowed to deduct six pounds of the thirty pounds in wages due servant John Bubier in 1789.[65] Without proof, the Court of Sessions would not even consider claims of negligence, as when Joseph Yeatsby tried to defend himself in a suit for wages brought against him in 1789 by his servants Henry Lahey, Patrick Rourke, James Purcell, and Dennis Bryan. The court found that Yeatsby had no proof of negligence "other than their not having caught so much fish as any of the neighbouring boats," and ordered

60. PANL, GN5/1/B/1, Surrogate Court Minutes, Harbour Grace, Box 1, 1787-1818, 1787-1788: Thomas Burton vs. his unnamed servants, 2 October 1787.
61. Ibid., servant Thomas Geary vs. his master W. McCarthy, 22 October 1787; planter John Cleary vs. his servant J. Quirk, 22 October 1787.
62. Ibid., James Snelgrove vs. Daniel Crowley and David Cuchin, 3 October 1787.
63. Ibid., Richard Taylor vs. William Maloney, 10 October 1787; Maurice Gambon vs. Mr. Keefe, 13 October 1787; Job Core, for William Knight, vs. Darby Breon, 26 November 1787. See also ibid., Box 1, 1793-1795: George Sparks vs. John Barret and others, boat crew of Edward LaCour, 3 September 1795 and John Perchard vs. Parsons, Russel, and others, 19 January 1795.
64. Servants could occasionally claim wages from their masters when the latter's neglect resulted in a small catch throughout the fishing season. The Court of Sessions, for example, awarded Darby Conners, hired on shares, £19.5.6 in addition to £2.14.6 (the balance of his account) and £ 0.40.0 passage money home in 1789 as a result of the drunkenness and neglect of his master, Edward Harrington. See PANL, GN5/4/B/1, Court of Sessions Minutes, Harbour Grace, 1788-1817; Box 1, 1788-90: Darby Conners vs. Edward Harrington, 28 September 1789.
65. Ibid., John Bubier vs. Richard Valentine, 20 October 1789. In a similar case, the Court of Sessions refused to allow John Power not to pay his servant Peter Power's wages because of his infirmities. After deducting three pounds for his trouble in employing Peter Power, the court forced John Power to pay the balance of his wages. See ibid., Box 1, 1793-99: Power vs. Power, 2 December 1793.

that Yeatsby pay the wages, reserving forty shillings each for the servants' passage money to Great Britain.[66] Even when a planter won, his resistance to a servant's wage claim on grounds of negligence was not always an unqualified victory. When Michael Cahil sued his master William Thistle for the five pounds the latter held back from wages in 1789, Thistle stated in court that this amount was for Cahil's negligence in not returning to his master's house after a day catching caplin. The court allowed Thistle to deduct only £1.10.0 as well as forty shillings for Cahil's passage money.[67] It was no easy task for planters to use negligence as a defence against servants' wage suits in the Court of Sessions.

Masters were much more likely to win cases involving negligence if they sued their servants directly for the offence, rather than making a deduction from the servants' wages without the court's authority. Negligence could take many forms besides the damaging of equipment. The Court of Sessions authorised Matthew Wells to deduct forty shillings from the wages of his servant Thomas Kennally after the latter struck Wells in 1788.[68] The court ruled in 1789 that Thomas Fahey's four servants, his boat crew, must pay him four pounds from their wages after absenting themselves from his service for most of September.[69] Thomas Hennebury had to pay a fine of forty shillings from his wages to his master Simon Wells in 1796 for missing two days fishing while being drunk.[70] Neglect of duty could be a much more serious affair occasioned by tensions over wage payment between planter and servant. In 1791, Bartholomew Corban brought neglect charges against his servant Andrew Williams. The latter had cursed Corban and threatened the planter with a gun. The court did not take a severe attitude towards Williams because his behaviour was a response to Corban's refusal to give him security for his wages. The court fined Williams a total of £8.9.0 and discharged him from Corban's service with £9.17.6, the balance of his wages.[71]

66. Ibid., Henry Lahey *et al.* vs. Joseph Yeatsby, 20 October 1789.
67. Ibid., Michael Cahill vs. William Thistle, 2 November 1789. For similar cases see ibid., Box 1, 1790-1791: Patrick Mullins vs. Laurence Hearn; Mullins sued his master Hearn for withholding wages under "pretence of Neglect." The court allowed Hearn to deduct only twenty shillings, leaving a balance of £5.10.11 he had to pay Mullins. In the case of Thomas Kelly vs. Charles Carroll, 20 November 1790, the court allowed the defendant to deduct only forty shillings and forced him to pay Kelly eight pounds, the rest of his wages. See also ibid., Box 1, 1793-99: John Fleming vs. Dinah White, 3 November 1793. The court permitted the latter to deduct fifteen shillings from Fleming's wages, but still forced her to pay his wage balance of £3.0.3 minus forty shillings for passage home.
68. Ibid., Matthew Wells vs. Thomas Kennally, 3 November 1788.
69. Ibid., Fahey vs. Sullivan & Co., 22 October 1789.
70. Ibid., Simon Wells and Co. vs. Thomas Hennebury, 20 November 1796.
71. Ibid., Bartholomew Corban vs. Andrew Williams, 29 September and 24 October 1791. Other cases involving negligence are ibid., Box 1, 1788-1790: James Howell vs. Patrick Holden, 14 October 1788; Nicholas Dobbyn vs. Michael Quinlan, 3 November 1788; Charles Carrol vs. Jn. Sheppard, 23 February 1789; John Ash vs. James Caldwell and Phillip Paulhaut, 28 September 1789; Roger Thomey vs. Patrick Fitzgerald, 28 September 1789; Lewis vs. Butler and servants, 2 November 1789; Phillip Shaney vs. Samuel Symmonds and William Bishop, 28 September 1789; Cornelius Magnan vs. Richard Skehan, 26 October 1789; Mrs. Jane Pike vs. Richard Taylor, 29 October 1789; John Rixin vs. Luke Low and John Hayter, 12 November 1789. See also ibid., Box 1, 1790-91: James Davis vs. John Dean, 1 November

IMPACT OF COURT SUITS

Newfoundland's Chief Justice Reeves recognised the impact that the use of Palliser's Act by servants had on planters' lack of success in accumulating capital in the fishery. The Chief Justice noted that Palliser's Act had not succeeded in preserving the migratory fishery against the constant disruption of war. Merchants, on the other hand, had discovered that it was less risky to let resident planters assume all of the responsibility for producing salt cod and cod oil. Reeves felt that these planters could not succeed under the regulations imposed by Palliser's Act. Merchants charged such high prices for supplies and gave such low prices for fish and oil that planters earned little in a season. Some merchants might not even issue supplies if they thought planters might not catch enough fish to pay for them. In the midst of the varying availability of merchant credit, planters faced the constant demand for guaranteed wages from their servants. In a bad year, the financial ruin of planters often resulted from the twin demands of merchant credit and servants' wages. Palliser's Act protected the servant but not the "manufacturer," the planter. Reeves hoped that his reform of the courts might be accompanied by some new law which protected servants, merchants, and planters equally.[72]

Both Surrogate and Supreme Court judges continued to adjudicate civil disputes under Palliser's Act. In the inflationary early days of the Napoleonic Wars, however, return passage fares to Great Britain more than doubled, a fact which prevented seamen and fishermen from leaving Newfoundland at the end of the fishing season. Consequently, Newfoundland officials began to overlook the requirement of Palliser's Act that servants return home. Captain Crofton, winter commanding officer of the Newfoundland Squadron, reported that war also caused servants' wages to rise sharply. Servants stayed in Newfoundland and lived off half their wages, while their families back home enjoyed the use of the rest.[73]

In 1793, witnesses before a British House of Commons select committee investigating the Newfoundland trade corroborated Reeve's assessment of the impact of Palliser's Act on planters. Merchant William Newman of Dartmouth stated that the act burdened employers of servants in the Newfoundland fishery. Servants learned that the act's weak penalties for negligence prohibited masters from effectively disciplining their hired labour, especially the one that employers could not dismiss servants except in case of desertion. The act imposed only small penalties on servants for poor work in an industry in which employers had few means of controlling production during a restricted catching and curing season. Newman claimed that the wage and lien provisions of Pal-

1790; John Power vs. William Quinlan and John Lawler, 14 February 1791, Nicholas Meaney vs. Thomas Pottle, 24 October 1791. Ibid., Box 1, 1793-1799: Isaac Bradbury vs. James Clements, 11 November 1793; Martin & Co. vs. George Cawley, 18 November 1793; Maurice Connelly vs. John Mahaney, 11 May 1795; Patrick Quin vs. James Whelan, 11 May 1795; Francis French vs. Ann Ash, 11 May 1795; Robert Horwood vs. Daniel Sullivan, 23 November 1795; Andrew Coughlan vs. James Geary, 2 January 1798; John Stretton vs. Thomas Cram, 27 March 1798; Martin vs. Palmer and Phelan, 2 December 1799; and Ricketts vs. Parsons, 9 December 1799.

72. CNS, CO 194, B-678, v. 38, 1788-1791, F. 290-302; quote from F. 303.

73. Ibid., v. 40, 1798, F.17-34, Captain Crofton, *Pluto*, to Governor Waldegrave, Portsmouth, 10 January 1798.

liser's Act ruined many planters in Newfoundland because it did not allow employers to penalise servants sufficiently for neglect.[74]

Mr. Jeffrey, a Poole merchant, agreed with Newman, claiming that the wages and lien provisions ruined planters by encouraging servants to slacken their work pace once they caught and cured enough fish to secure their own wages. Jeffrey objected to the limit of only two days' wages being deducted for a day's neglect by a servant. The intensive nature of the fishery — trying to catch and cure a resource which a planter could not control either in supply or drying conditions — meant that "a single Day's Absence from one of the Fishermen may keep the Boat or Vessel from going at all to Sea; and that the Five Day's Pay for such Neglect is by no Means a Compensation for the Loss of Duty that the Employer may incur."[75]

All of the witnesses before the 1793 select committee reported that Palliser's Act did nothing to stem the tide of the resident fishery. Yet the act remained in place. Throughout the Napoleonic Wars, it remained the guiding force behind wage law in the Newfoundland cod trade. The wars themselves, however, overrode provisions within the act designed to secure the return of servants to England, as the difficulties of conducting a transatlantic fishery within a context of increasing prices for fish led many merchants to rely further on the supply of fish from a resident fishery. In 1801, Lieutenant Governor Barton found that planters, in the initial labour shortages of the war, paid very high wages to their servants who demanded enough from the fishing season to live for an entire year. Residency and the seal fishery helped offset this difficulty for the planters.[76] A ruling by the Supreme Court at St. John's in 1802 accepted the resident fishery as permanent by extending to resident fishermen the wage lien protection of Palliser's Act. This protection was afforded under Newfoundland's recent Judicature Act but the provisions for returning servants to Great Britain at the end of their contracts was not continued.[77] In other words, the wages and lien system had made the transition from a law governing the migratory fishery to that of a resident fishery at Newfoundland.

As Governor Gower observed in 1804, extensive employment of servants on wages by planters would only last as long as the hothouse environment of war.[78] The fortunes of war were not kind to many planters as they could not obtain high enough prices for their fish to compensate for elevated wage rates and the high prices for equipment and provisions they obtained on credit.[79] With the end of the boom times in the Newfoundland fishery induced by the Napoleonic Wars, resident planters withdrew from relying on waged servants to produce salt cod.

74. Ibid., v. 41, 1771-1798, F. 64-70, "A Brief State of the Evidence laid before the Committee of the House of Commons, upon the Newfoundland Trade and Fishery, in the last Session, 1793."
75. Ibid., F. 70-71.
76. Ibid., B-680, v. 43, F. 26-28, "The Report and Remarks by Robert Barton esq. Lieutenant Governor of the Island of Newfoundland — 1801."
77. PANL, P1/5, Duckworth Papers, R35.5, M-3176, F. 3386-87, "Opinion of G. Williams, T. Tremlett & Thos. Cooke on 15 G.III, c. 31," 13 November 1802.
78. CNS, CO 194, v. 44, 1804-05, B-680, F. 50-53, Governor Sir E. Gower to Earl Camden, Hermitage, 24 December 1804.
79. Ibid., B-681, F. 141, Gower to Camden, St. John's, 18 July 1805.

Historians such as Keith Matthews and historical geographers such as C. Grant Head and W. Gordon Handcock have argued that the withdrawal of planters from the employment of labour for wages represented a strategy made possible by Newfoundland's demographic development. As the families of resident planters grew, their production became based more and more on family labour. This reduced production costs within a resource environment which forced planters to rely on merchant credit for all of their capital and subsistence requirements except for a few garden vegetables. As demographic expansion began to exceed the resources of early settlement areas such as Conception Bay, some planters moved to newer areas up Newfoundland's northeast coast. Until young families developed to a point in their life-cycle at which they could supply enough labour for the fishery, planters would hire some servants who, through intermarriage, would themselves become members of their families. In Handcock's view, the interaction of the nature of the resource and demographic expansion brought about the decline of wage labour employment as a basis for capital accumulation by planters in Newfoundland. In the long-settled parts of Conception Bay "the family system of labour had largely supplanted the practice of hiring imported servants."[80]

Handcock's analysis of the long-term decline of wage labour employment in the planter fishery is generally sound, but the inability of planters to engage in any long-term accumulation of capital based on wage labour was not determined by Newfoundland's resource endowment alone. Besides having to deal with the desire of merchants to profit from the fish trade in an environment in which a producer had to look to importers for almost all their requirements, planters had to cope with institutions imposed on the northeast coast by a British state trying to maintain a migratory fishery at Newfoundland as part of its imperial doctrine. The Surrogate and Sessions Courts both enforced the requirement of Palliser's Act that planters observe to the letter prearranged wage contracts with their servants. Planters could not renegotiate these contracts to meet shortfalls in seasonal catches. Under the rule of Palliser's Act, servants and merchants both ate at planters' tables before the planters received a morsel.

It would be misleading to see planters' problems with Palliser's Act as a function of the structural imperatives of an imperial policy which would not face the reality of late-eighteenth-century Newfoundland. Palliser's Act was designed by Board of Trade officials to reimpose a migratory fishery on Newfoundland. The island's rulers never intended for this law to be used as a defence for servants' rights to the payment of their wages. Yet Palliser's Act became the servants' bulwark against the efforts of planters and merchants to avoid paying their wages through charges of negligence, truck, or outright refusal while failing in the objective of its designers. It would do well to keep in mind E. P. Thompson's suggestion that eighteenth-century English law was only partially an ideological expression of class rule; simultaneously, it acted as a mediating agent in class relations which legitimised rule in the context of class struggle.[81]

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80. Handcock, *Soe long as there comes no women*, 106. Handcock here builds on Matthews, "West of England-Newfoundland Fishery," 482-596 and Head, *Eighteenth Century Newfoundland*, 218.

81. E. P. Thompson, *Whigs and Hunters* (Middlesex, 1975), 264-69.

Palliser's Act embodied a class struggle between planters and their servants. It would be wrong to misconstrue this struggle as a proletarian conflict with the forces of capitalism. If by capitalist one means that the social relations of production were becoming dominated over time by a class of property owners utilising their capital through the employment of members of a separate class of wage labourers, the employment of great numbers of servants in the inshore fishery does not in itself mean that the fishery was becoming more capitalist. Fishing servants in this period resembled more the rural servants of early modern England, constituting not a class in themselves but, instead, the youth of a class of household producers, residing with and part of the family of their hirers on an annual contract in a transitional period between their own adolescence and the establishment of their own households. Even fishing servants who came from the West Country, and later from Ireland, intended to return to their own households after serving a year or two in the fishery. Yet, in joining the households of their employers, servants often married into the planter's family. Through such marriages, servants became residents themselves, eventually expecting to become masters of their own fishing households.[82]

The struggle between servants and planters was thus more of a struggle between people at different stages of their lives within a developing class context. Nothing, however, was predetermined about the direction of this class development, whether it was to become more industrial-capitalist-like in its reliance on wage labour in an increasing division of labour, or retreat into household production. That the latter occurred must be seen within the severe resource constraints of the Newfoundland cod fishery in the eighteenth century. In their simple, usually solitary, insistence that their masters observe the letter of Palliser's Act, servants' struggles in the Surrogate and Sessions Courts gave life to a long-term structural impediment to capital accumulation on the basis of wage labour. By accepting servants' wage demands as fair play according to the wording, if not the spirit, of Palliser's Act, Surrogate judges and justices of the peace administered a law that protected servants' rights more than it did the rights of planters or a migratory fishery.

This is not to say that the political and cultural world of the Newfoundland fishery turned upside down in the late-eighteenth century. When servants clearly stepped outside of the law, justice was harsh in its reprimand. When Samuel Pinkum deserted his master at Ferryland in 1788 and was later arrested for stealing wood at Harbour Grace, the Surrogate sentenced him to forty lashes with the cat-of-nine-tails over two days, had Pinkum dragged through the harbour by horse, and then jailed him until Pinkum could be returned to his master.[83] Seven years later, the Court of Sessions sentenced Hugh Tuffin and William Sachary to thirty-nine lashes each with the cat-of-nine-tails for steal-

82. W. Gordon Handcock, "An Historical Geography of the Origins of English Settlement in Newfoundland: A Study of the Migration Process," PhD diss., University of Birmingham, 1979, 69-240. Ann Kussmaul, *Servants in husbandry in early modern England* (Cambridge, 1981), 3-25.

83. PANL, GN5/4/B/1, Surrogate Court Minutes, Box 1, 1787-1818, 1787-1788: The King vs. Samuel Pinkum, 27 March 1788.

ing fish from their masters, John and Clement Noel.[84] The courts enforced the rule of property within the law of eighteenth-century British regulation of the fishery. Fishing servants, however, could bend those rules to enforce their wage agreements, eventually making their labour more attractive to planters as unpaid son-in-laws rather than wage labourers.

The enforcement of Palliser's Act by the courts of the northeast coast hampered planter accumulation of capital on the basis of wage labour. Contrary to the interpretations of Antler and Sider, the wage lien embedded in the act discouraged planters' use of wage labour except under the unusually good market conditions of war. In an attempt to preserve the migratory fishery by encouraging servants to return to Great Britain through a system of legal guarantees of prearranged contracts with employers, Board of Trade officials actually provided servants with the means to resist the inroads of capital formation on their wages. While war continued to disrupt the migratory fishery and encourage residency, servants found that the courts at Harbour Grace would enforce the letter of the wage guarantees of Palliser's Act. Servants won most of their suits both for wages against planters and merchants, and against the latter two groups' attempts to minimise wage payments through account price manipulation. Only when planters wrought charges of neglect against them did servants not enjoy a superior protection of the law but, even then, penalties for neglect took shape within the limits of Palliser's Act.

84. Ibid., Court of Sessions Minutes, Harbour Grace, Box 1, 1788-1817, 1793-95: The King vs. Tuffin and Sachary, 17 December 1795.