

# Appeals to the Privy Council

## Calendar of State Papers Colonial Series

JAM\_1680\_00

Mingham v Martin

Jamaica

*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680*, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 943, pp. 334–346 (All the documents from vol. 10 are dated in 1680, except for the first).

<b>March 20</b> <b>[1679].</b> <b>St. Jago de</b> <b>la Vega.</b>	<b>943.</b> Governor Lord Carlisle to Secretary Coventry. All is quiet here, but I am impatient to hear from you. One Captain Francis Mingham has lately been in trouble by his improvidence and reservations to elude the officer of His Majesty's Customs. The matter came to a trial in the Court of Admiralty, and his ship was condemned for making a false entry. Notwithstanding my kindness, whereby he was prevented of being sold according to the condemnation, he is still dissatisfied, and I believe will incense his owners to attempt your ears to inform the King. No letters from Whitehall since 5th December. [ <i>Col. Entry Bk., Vol. XXIX., p. 292.</i> ]
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680*, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1302, pp. 477–492

<b>Feb. 23</b> <b>[1680].</b> <b>St Jago de</b> <b>la Vega.</b>	<b>1302.</b> Governor Lord Carlisle to Lords of Trade and Plantations. Were I not well assured of my true regard to the King, and conscious that I have acted duly by the advice of my Council and according to my best discretion, I should be more troubled than I am at the information of my friends of your Lordships' resentment against my proceedings. . . .  About Christmas arrived here one Captain Francis Mingham from England with an order from your Lordships directed to be shown to Sir Henry Morgan and Mr. Thomas Martin, the Receiver General, upon a scandalous petition delivered to your Lordships against them. In the main I am well satisfied. Mingham is a very ill man. He took upon him (though there was no mention of me either in the petition or the order) to serve me too, as he had served Sir H. Morgan and Mr. Martin, as if I had been concerned in what he so falsely and maliciously charged them with. His ship was condemned in the Admiralty Court, and sold but for 300 <i>l.</i> , whereas the petition says 800 <i>l.</i> , and that it was divided between them, whereas I do not believe that they turned a penny of it to their own use. Sir Henry as Judge of the Admiralty Court has not yet received even his fees, and Mr. Martin has given his share for the building of an Exchange in Port Royal for the encouragement of trade. They are now engaged in a trial with Mingham before the Grand Court, the result of which shall be reported to you as speedily as possible. . . .  <i>Postscript.</i> —Since writing the above Mingham's attorney asked me to dissuade
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	<p>Sir Henry Morgan from prosecuting his action, promising a written acknowledgment from Mingham that his petition was false and scandalous. Sir Henry, however, resolved to put it on the country, and the jury has given him 2,000<i>l.</i> damages. Whereby your Lordships may see how easy it is for us at this distance to be reproachfully and scandalously traduced to you, till we are made happy in an opportunity of vindication. <i>Subscribed</i>, Recd. 2 June 1680. 5 <i>pp.</i> [<i>Col. Papers, Vol. XLIV., No. 28, and Col. Entry Bk., Vol. XXIX., pp. 389–396.</i>]</p>
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680*, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1304, pp. 477-492..

<p><b>Feb. 24. Port Royal Jamaica.</b></p>	<p><b>1304.</b> Sir Henry Morgan to Lords of Trade and Plantations. In obedience to your Lordships’ order of 10th October, I transmit the exemplification of the whole trial, which, with the papers and depositions will, I doubt not, prove to your Lordships that the petition of Francis Mingham is false and scandalous, except in the one fact that the ship was condemned. The petition says that she was condemned for two casks of brandy; but it was in reality for two butts of brandy and twenty casks of black cherry brandy which were plainly kept on board to defraud the customs. Other statements are equally false.</p>
	<p>It is plain that Mingham makes no conscience of swearing falsely, for he exhibited a bill in the High Court of Justice denying on oath that he had ever delivered the petition or served me with a copy of your Lordships’ order, and a little later another bill in part confessing it. There was no malice on my part or Mr. Martin’s in the trial before the Admiralty Court as Mingham falsely asserts, nor did covetousness enter into the matter. The office of Judge Admiral was not given me for my understanding of the business better than others, nor for the profitableness thereof, for “I left the schools too young to be a great proficient in either that or other laws, and have been much more used to the pike than the book; and as for the profit there is no porter in this town but can get more money in the time than I got by this trial. But I was truly put in to maintain the honour of the Court for His Majesty’s service,” without which the Acts of Navigation cannot be enforced for it is hard to find unbiassed juries in the Plantations for such cases. For instance, a ship from Ireland came here with several casks of Irish soap, and was seized by His Majesty’s Receiver. The case was tried in the Court of Common Pleas, and the jury found for the defendant with costs. One witness swore that soap was victuals and that one might live upon it for a month, which the jury readily believed and found the aforesaid verdict. I beg your Lordships to believe that if I have erred at all in this matter it has been in judgment only. May God love me no longer than I love justice. (<i>Two closely written pages, the signature and date only in Morgan’s hand.</i>) <i>Endorsed</i>, Recd. 23rd June 1680. Read at Committee, 29th June 1680. <i>Annexed</i>,</p>
	<p>1304. i. Declaration of the case Sir Henry Morgan <i>versus</i> Francis Mingham, containing the libellous petition complained of. 2 <i>pp.</i></p>
	<p>1304.ii. Francis Mingham’s demurrer. 2 <i>pp.</i></p>

1304.iii. The Defendant's reasons for praying arrest of judgment. 2 pp. (The above all copies.) [ <i>Col. Papers, Vol. XLIV., Nos. 30, 30 I.–III.</i> ]
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680*, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1397, p. 544–559:

<b>June 18.</b>	<b>1397.</b> Affidavit of Samuel Harding of London, citizen and baker, a chirurgion by profession. Sailed in the pink Francis, Mingham master, to Jamaica in October. Just before they started a letter came on board, enclosing a petition to the King in Council and an Order thereupon, both signed by Sir Philip Lloyd, which on arriving at Jamaica Mingham delivered to deponent with orders to serve one copy on Sir Henry Morgan and the other on Mr. Thomas Martin, both of whom shortly after sued Mingham and obtained damages against him. [The story of the succeeding abstract is repeated with little variation.] Mingham remains imprisoned and Peter Bennett was forced to bring the ship home, to the great loss of the said Mingham, who stands condemned to pay heavy damages for nothing else than pretended scandal in the petition.
	Deposition of Alexander Ekyms, mariner, in confirmation, 22nd June. 3 pp. [ <i>Col. Papers, Vol. XLV., No. 17.</i> ]

*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680*, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1398, p. 544–559:

<b>June 18.</b>	<b>1398.</b> Affidavit of Peter Bennett, master of the ship Francis of London, a pink. The case of Francis Mingham, who was cast in 2,000 <i>l.</i> damages in an action brought against him by Sir Henry Morgan for defamation. Deponent declares that Mingham was illegally arrested before this fourteen days of grace after judgment were expired, and imprisoned in the gaol with the slaves and common “rouges” till he consented to fortify a room above stairs for his confinement, which cost him sixteen pounds. 2 pp. [ <i>Col. Papers, Vol. XLV., No. 18.</i> ]
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680*, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1457–9, p. 559–579:

<b>[July 7.]</b>	<b>1429.</b> Answer of Thomas Martin, Receiver General of Jamaica, to the complaint of Francis Mingham, addressed to Lords of Trade and Plantations in obedience to Order in Council of 10th October 1679. Mingham came to Port Royal about the 6th of December 1678 and not having made due entry of his ship and cargo according to law, with evident design to defraud the King's Customs, his ship was seized by Martin as the law directs. But Martin utterly denies Mingham's allegations of malice and collusion with Sir Henry Morgan, or that the ship was sold for 800 <i>l.</i> and the sum divided between him and Sir Henry Morgan. The ship was sold for 300 <i>l.</i> to Mingham and the proceeds divided according to law, a third to the King, a third to the Governor, and a third to Martin himself, the prosecutor. So far from making any
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	profit out of the seizure Martin freely gave his share towards the building of an Exchange in Port Royal. Martin therefore trusts that their Lordships will hold him guiltless of the crime imputed by Mingham, and show some mark of disfavour to Mingham for his conduct. <i>Signed. Inscribed, Recd. July 7, 1680. 2 pp. [Col. Papers, Vol. XLV., No. 39.]</i>
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1457–9, p. 579–585:*

<b>[July.]</b>	<b>1457.</b> The case of Francis Mingham, and his grievances against Sir Henry Morgan and Receiver General Martyn of Jamaica. Humbly offered to the consideration of the King and Privy Council, with request that an Order in Council may be issued to bring him to England for the re-trial of his case. <i>Printed. 2 pp. [Col. Papers, Vol. XLV., No. 59.]</i>
<b>[July.]</b>	<b>1458.</b> Petition of Dorothy Mingham to the King and Privy Council. Setting forth the story of the troubles of her husband, Francis Mingham, in Jamaica, and begging for his liberation from prison. A long story. <i>Signed, Dorithy Mingham. [Col. Papers, Vol. XLV., No. 60.]</i>

<b>July 21. Whitehall.</b>	<b>1459.</b> Order of the King in Council on petition of Dorothy Mingham for the release of her husband Francis Mingham. That the said Francis Mingham or some other person on his behalf give security to the Board in the sum of 2,500 <i>l.</i> , that he will answer the judgment given against him in Jamaica for that amount in case the Board see fit to affirm the same, and that Francis Mingham be set free and allowed to transport himself to England, there to answer his complaint. <i>Mem.—The security was given to the Board before the delivery of the order. 2 pp. [Col. Entry Bk., Vol. XXIX., pp. 403–5.]</i>
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1576, p. 623–635:*

<b>Nov. 5. Port Royal.</b>	<b>1576.</b> Minutes of the Council of Jamaica. Present: Sir Henry Morgan, Lieutenant-Governor, and thirteen members. The King's Order in Council of 21st July for the discharge of Francis Mingham from prison was read; and in obedience thereto the said Francis Mingham was sent for by Sir Henry Morgan and discharged. Francis Hanson, counsel to Mingham, averred to the Council that the article in Mingham's printed case alleging a writ of error to be denied him was most false, for no writ of error was to his knowledge demanded. Major Yeoman, Provost-Marshal, made oath that Francis Mingham was arrested in an action upon judgment, and that he received no orders from Sir Henry Morgan as to Mingham's arrest and confinement. The gaol was too weak to allow Mingham the chance of escaping in his own pink. John Starr, clerk to the Provost-Marshal, made oath that Mingham was not charged with Sir Henry Morgan's execution until many days after the fourteen days mentioned in the printed case. Robert Staley, gaoler, swore that he
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	received no order from Sir Henry Morgan as to the confinement of Mingham, and Harry Sound, another gaoler, confirmed it. Francis Mingham owned that he was kindly treated in prison and admitted that it was not true, as stated in the printed case, that he had been charged 16 <i>l.</i> to build him a prison. By all of which circumstances and others too tedious for the Lords of Trade and Plantations the Council is well satisfied that Francis Mingham's troubles in Jamaica were due more to his own imprudence and malicious desire for revenge than to any purpose of Sir Henry Morgan to oppress him. <i>Copy, certified by Rowland Powell, Clerk of the Council. [Col. Papers, Vol. XLVI., No. 33.]</i>
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680*, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1577, p. 623–635:

<b>Nov. 6. Port Royal.</b>	<b>1577.</b> The Council of Jamaica to Lords of Trade and Plantations. In obedience to your Lordships' orders to inform you every six months of what we may think for the good of the Colony, we write to inform you that in obedience to the King's Order in Council we have released Francis Mingham from prison. And herein we find occasion to represent with all humility the many great inconveniences that will attend the prosecution of justice in this Island if this case should be drawn into precedent, or if writs of error or habeas corpus out of the King's Bench in England be allowed to remove any debtor in execution from this place thither, as in this case has been practised. For it must needs tend to the defeating of justice here and discouragement of trade (on which things the welfare of the Island depends), especially since it is not difficult at so great a distance to allege very fair and specious pretences which upon proof may appear to be clearly untrue. We therefore beg your Lordships to represent the foregoing to His Majesty in Council. <i>Signed</i> , Rob. Byndloss, Hder. Molesworth, John Webbe, F. Watson, Jo. Cope, Tho. Freeman, Charles Whitfeld, J. Fuller, Tho. Ballard. <i>Inscribed</i> , Recd. 15 Feb. 1680–81. 1½ pp. [ <i>Col. Papers, Vol. XLVI., No. 34.</i> ]
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680*, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1581, p. 623–635:

<b>Nov. 8.</b>	<b>1581.</b> Deposition of Sir Charles Modyford, Bart., taken before Sir Francis Watson, a Judge of the Supreme Court of Jamaica. After the arrival of Francis Mingham in the pink Francis, from Jamaica, in the port of London, it was found on his delivering his accounts to his owners that there were several articles charged to their debt upon account of a seizure made of the said pink in Jamaica. Thereupon questions arose whether the seizure was legal or illegal. The majority of the owners, whereof deponent is one, thought it was legal, and therewith declined to be further concerned with Mingham's charges on this account, but out of pity gave him a bill of exchange for 100 <i>l.</i> Further, when deponent arrived in Jamaica he moved Sir Henry Morgan on behalf of Mingham, when Sir Henry frankly promised him that if Mingham would pay his costs in the affair and in acknowledgment of the injury he had done him would present his lady with such a coach and horses as deponent might think fit, then
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	he would fully acquit and forgive him of his execution of 2,000 <i>l.</i> ; which offer was duly made to Francis Mingham and refused. <i>Copy. Certified by Rowland Powell. Inscribed, Read 12 April 1681. [Col. Papers, Vol.XLVI. No. 37.</i>
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1585, p. 623–635:*

<b>Nov. 12. Port Royal.</b>	<b>1585.</b> Sir Henry Morgan to Lords of Trade and Plantations. I have duly discharged Francis Mingham from prison in obedience to your Lordships' letter of 25th July last, though I am persuaded that I could have given you good reasons for keeping him there. However, my duty pleased me more than my advantage in the 2,000 <i>l.</i> execution, and I am grateful to you in taking security for his answering the same in England. I now beg leave to present your Lordships with the true state of the case that you may see how your great goodness has been abused both by his original petition and his printed case; nor do I doubt that you will better understand, when you have read the same, how scandalously both I and the government have been slandered, and how much both must suffer unless your Lordships' deep foresight and wisdom obviate so growing an evil. <i>Inscribed, Recd. 9 Feb. 1680. [Col. Papers, Vol. XLVI., No. 40; and Col. Entry Bk. Vol. XXIX., p. 466.]</i>
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1588, p. 623–635:*

<b>Nov. 12.</b>	<b>1588.</b> A humble motion on the part of Jamaica [to the Lords of Trade and Plantations]. . . . 3. Also whether some method of appeal from the judgment of the Supreme Court somewhat like the examination of a judgment given here in the King's Bench by the same judges and others of the land in the Exchequer Chamber be not needful to prevent such hardship as Francis Mingham undergoeth, who thought he hath met with speedy justice here, yet his imprisonment will be near two years. . . . 1 <i>p.</i> <i>Inscribed, Delivered by Colonel Long, Nov. 12, 1680. Read 27 Nov. 1680. [Col. Papers, Vol. XLVI., No. 43.]</i>
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*Calendar of State Papers Colonial, America and West Indies, Volume 10: 1677–1680, W. Noel Sainsbury and J.W. Fortescue, ed. (London, 1896), no. 1622, p. 635–641:*

<b>Dec. 18. Council Chamber.</b>	<b>1622.</b> Report of Lords of Trade and Plantations to the King, on the proposals of the merchants and planters of Jamaica ( <i>see ante, No. 1575</i> ). . . . (3) As to the question of appeals from the judgment of the Supreme Court of Jamaica, with special reference to the case of Francis Mingham, we think it is fit that appeals should be permitted from all the Courts of Jamaica to the Governor and Council on civil causes (at the hearing whereof any three or more of the Judges of the Supreme Court are to be present), provided that the value appealed for exceed 100 <i>l.</i> , and that the Appellant give security for such costs
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	as shall be awarded if the original sentence be confirmed. If the Appellant be unsatisfied with the judgment of the Governor and Council, he should then be at liberty to appeal to your Majesty in Council, on making good the proviso requisite in the first appeal. In this case execution shall not be suspended by reason of such appeal to your Majesty. We recommend, therefore, that the Governor be directed to settle this method in Jamaica by the best means he can. . . . <i>Signed</i> , Clarendon, Bath, L. Jenkins. 5½ pp. [ <i>Col. Papers</i> , Vol. XLVI., No. 69.]
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*Calendar of State Papers Colonial, America and West Indies, Volume 11: 1681–1685*, J.W. Fortescue, ed. (London, 1896), no. 40, p. 15–25:

<b>[March 9, 1681.]</b>	<b>40.</b> Petition of Francis Mingham to the King and Privy Council. Thanks them for their interference on his behalf with the Admiralty Court in Jamaica. Begg appointment of whom His Majesty will to hear his cause, both in respect of the condemnation and sale of his ship and of the proceedings taken against him for appealing to the Board of Trade and Plantations. <i>Inscribed</i> , Read in Council, 9 March 1681. 1 p. [ <i>Col. Papers</i> , Vol. XLVI., No. 107.]
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*Calendar of State Papers Colonial, America and West Indies, Volume 11: 1681–1685*, J.W. Fortescue, ed. (London, 1896), no. 65–67, p. 25–37:

<b>April 6. Whitehall.</b>	<b>65.</b> Order of the King in Council. The petition of Francis Mingham ( <i>ante</i> , No. 40) to be referred to the Lords of Trade and Plantations for their report. ½ p. <i>Inscribed</i> , Read 12 April 1681. [ <i>Col. Papers</i> , Vol. XLVI., No. 114, and <i>Col. Entry Bk.</i> , Vol. XXIX., p. 460.]
<b>April 6.</b>	<b>66.</b> Memorandum of the foregoing Order in Council by the Clerk, Francis Gwyn. <i>Scrap</i> . [ <i>Col. Papers</i> , Vol. XLVI., No. 115.]
<b>April 6.</b>	<b>67.</b> Petition of Edward Yeomans, Provost Marshal of Jamaica, to the King. Showing that though there is no prison in Jamaica the petitioner is liable for all escapes; that he was forced to build a room for Francis Mingham and hire guards at extraordinary trouble and expense; that though he might have exacted his charges and fees for Mingham, yet in dutiful obedience to the King's order he released him at once, without receiving any satisfaction; and that he therefore begs the King and Council, on hearing Mingham's case, to order his fees to be paid. <i>Inscribed</i> , Rec. 6 April 1681. Read 12 April 1682. <i>In Entry Book</i> is a memorandum that the petition was referred to the Lords of Trade and Plantations. 1 p. [ <i>Col. Papers</i> , Vol. XLVI., No. 116, and <i>Col. Entry Bk.</i> , Vol. XXIX., p. 461.]

*Calendar of State Papers Colonial, America and West Indies, Volume 11: 1681–1685*, J.W. Fortescue, ed. (London, 1896), no. 77, p. 25–37:

<b>April 15.</b>	<b>77.</b> Order of the King in Council. The report, dated 12th April, of the Lords of
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<b>Whitehall.</b>	Trade and Plantations on the case of Francis Mingham ( <i>see ante</i> , No. 40) was read, to following effect. We have heard both parties by their Counsel, and we think that the condemnation of Mingham's ship and goods was unwarranted, and his imprisonment and the proceedings on the action for scandal, contemptuous towards your Majesty's Council Board and throughout oppressive and unjust. We recommend that the 300 <i>l.</i> for which the ship was sold should be forthwith restored to Mingham, but, as the seizure was colourable and the case had divers circumstances of suspicion, without costs. As regards the action for scandal, we recommend that Sir Henry Morgan and Mr. Thomas Martin be called upon to express their satisfaction with our judgment, that Mingham may be no more troubled thereby, and that your Majesty should express, in such manner as you think best, your resentment towards Sir Henry Morgan and Mr. Martin, to discourage the like proceedings in other persons in power. We recommend further that Mingham be left to take such further legal remedy as he chooses to obtain satisfaction for his sufferings during imprisonment.
	As regards the petition of the Provost Marshal of Jamaica ( <i>ante</i> , No. 67), we think it reasonable that his fees should be paid by Sir Henry Morgan and Mr. Thomas Martin, according to the proportion of 2,000 <i>l.</i> and 500 <i>l.</i> for which Mingham was taken in execution. <i>Signed</i> , Bath, Clarendon, Conway, L. Jenkins, Francis North. Order in Council accordingly. [ <i>Col. Entry Bk., Vol. XXIX., pp. 462–466.</i> ]

*Calendar of State Papers Colonial, America and West Indies, Volume 11: 1681–1685*, J.W. Fortescue, ed. (London, 1896), no. 77, p. 772–773 (The date suggested in the *Calendar* is almost certainly wrong. To have any effect this document would have to have been filed prior to Privy Council's order of 15 April 1681.)

<b>[1682 ?]</b>	<b>2081.</b> The case of Sir Henry Morgan in reply to the printed case issued of Francis Mingham. A categorical criticism of the case. <i>2½ closely written pages.</i> [ <i>Col. Papers, Vol., LIV. No. 146.</i> ]
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(Mingham was also involved in a dispute with another captain in 1683. That captain had apparently flogged Mingham's mate to death. The dispute seems unrelated to this case. The documents may be found in the *Cal. State Papers*.)

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