PART IV

CROWN COLONY JAMAICA

CHAPTER XIII

CRISIS, CONSTITUTIONAL CHANGE AND RE-CONSTRUCTION

In St. Thomas in the East at this period was to be found a microcosmic picture of that apathy, moral and social decay, public corruption and defective legal administration which, as we have seen, were the very staple of life at the national level. It was in this parish that rebellion erupted, the consequences of which were to engulf not only the legal system but the entire constitution.

Although there were many large estates in this parish, the incidence of absentee-ism there was disproportionately high, exacerbating those evils always attendant upon the investing of authority in the hands of powerful but irresponsible agents, factors and middlemen.[1] Like the House of Assembly at Spanish Town, so the Vestry at Morant Bay was one of the most corrupt and inefficient of the day.

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[1] CO 137/323 Barkly to Newcastle 26/5/1854 "It is shown by a Return laid before the Assembly last year ... that more than half the Sugar Estates in cultivation on 31/12/1852 still belonged to absentees notwithstanding the rapid transfer of the smaller properties to practical planters which it will be perceived from my Journal is going on." CO 137/515 Norman to Derby 5/5/1884 "Although there are a large number of estates in St. Thomas many of the proprietors are absentees and I can hear of no eligible proprietor who is present and willing to officiate." (i.e. in the office of Custos).

In the field of legal administration, every feature of corruption of justice, of which mention has already been made in the preceding chapter, was in open manifestation in this parish. Complaint was made in 1862 that "the absence or non-attendance of justices frequently caused delay in dealing with cases and consequent delay of parties accused, and at other times such parties do not readily obtain bail but confined in a miserable place called a lock-up at Morant Bay, a place most disgusting and revolting to human nature. Want of cleanliness, stench enough to produce immediate sickness and disease. When Justice Walton and Paterson and I visited the place it was in this condition. Prisoners are locked up in one place and answer the calls of nature there. There is no debtor's jail in the parish and so the criminal and the civil debtor are herded together. Indian immigrants charged with stealing languish in gaol, unable to be tried for want of an interpreter because there is no means to pay for one."[2] For these comments and for other reasons the complainant George William Gordon was deprived of his commission of the peace, whilst through the influence of corrupted parochial power his stipendiary colleague Thomas Witter Jackson was transferred out of the parish.[3]

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[2] CO 137/367 Eyre to Newcastle 8/7/1862 (Forwarding complaint dated 7/5/1862 of G.W. Gordon).

[3] Jackson was transferred just a few months before the Rebellion and from then the spirit of revolt was sown in the peasantry.

The relative stations in life of the magistrates and great mass of the people prejudiced confidence in the administration of justice. Five-sixths of the magistrates were planters or connected with the management of estates, and so Thomas Witter Jackson did not sit at the Petty Sessions at Bath very often "because there generally was dissension there between myself and the other magistrates as to the guilt or innocence of parties and as to the insufficiency of proof .... . Planter magistrates had an unconscious bias against the labourers in deciding their guilt or innocence."[4] At the same time manifest partialities caused growing resentment. In the year 1865 one hundred and eighty negroes, but no planters were prosecuted. When Walton, a Justice of the Peace, severely supple-jacked his female servant, his fellow magistrates refused to prosecute him after she had taken out a summons against him.[5] It was by no means unusual in the course of a day's or week's trials for justices and complainants to change places with the progress of the cases and to gratify one another with the imposition of fines and appropriate orders for costs. "Redress was not to be had for the most outrageous wrongs: wages were habitually withheld for months, or never paid at all. Some of the owners and managers of estates, and therefore the most influential persons in the parish, were among the most brutal specimens of humanity ..... and the very Clergy,

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[4] T. W. Jackson's evidence before the Royal Commission . See infra.
[5] Evidence of T. W. Jackson before the Royal Commission. See infra.

never as a class backward to succour the weak, sided with the oppressors."[6] In August 1865 a peasant deputation trod the weary 45 miles from St. Thomas to the Capital to lay their grievances before the Governor. Their efforts were in vain. The Royal Representative refused to see them.

On Saturday the 7th of October 1865 as the Petty Sessions Court was in progress at Morant Bay, mounting dissatisfaction with the administration of justice gave vent to itself. A spectator loudly exhorted a defendant in a case of assault to pay only the fine and not the costs that were awarded, and upon an attempt made to apprehend him, the people rescued the spectator, attacking and beating the police.

On the following Monday, the Court was again interrupted at the end of a case involving disputed rights of ownership of land. Warrants were now issued by the magistrates for the arrest of the men who had disturbed the proceedings of Saturday but the policemen sent to arrest them were driven off.

On the 11th the Vestry met, as planned, in the Morant Bay Court House, and while in session Paul Bogle, representative of the unsuccessful August deputation and leader of the prior disturbances, together with a large gathering of his supporters, approached the building. There the Custos and local militia were ready to meet them. Orders to dispense were promptly given, and as promptly were they ignored. Stones were thrown, the militia after some hesitation,

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[6] CO 137/497 Musgrave to Kimberley 6/12/1880 (Letter of Mr. Justice Ker enclosed).

opened fire but soon retreated into the Court House before a barrage of missiles from the advancing crowd, and as the hated parochial coterie sought the shelter of its barricaded windows and doors, a peasant applied his torch to the Court House. As the occupants fled from the engulfing fire,[7] several were cut down by the angry crowd, some of whom spent their accumulated wrath in plunder, whilst others sought gratification in the release from incarceration of long arrested and untried prisoners.

Martial Law was declared over all of the county of Surrey except Kingston, and with the assistance of the Maroons, troops were deployed to hunt down and destroy the insurgents.

The restoration of order was throughout under the personal direction of Governor Eyre who reported: "The whole responsibility for what has been done therefore rests upon me."[8]

"What was done" was as bloody as it was wanton.[9] The number of people killed and wounded by the militia on October 11th is not known, but the authorities were later responsible for the execution of 354 people by sentence of court-martial and of the shooting or hanging or 85 others without trial of any kind."[10]

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7 After a call to prayer, according to one account.

8 CO 137/393/251 Eyre to Cardwell 20/10/1865

9 By 17/11/1865 Engels had written to Karl Marx in London "What have you got to say about the insurrection of niggers in Jamaica and the brutalities of the English?" Three days later Marx replied "The Jamaican story is characteristic of the cur-like vileness of your little Englishman. These fellows have nothing to reproach the Russians with." Geoffrey Dutton: The Hero as Murderer: The Life of Edward John Eyre p. 308.

10 Hall op.cit. p. 248

"These punishments inflicted under Martial Law were excessive; the punishment of death was unnecessarily frequent; the floggings were reckless, and at Bath positively barbarous; and the burning of 1,000 houses were wanton and cruel."[11] In contrast to the 24 deaths and 34 cases of injuries inflicted at the hands of the insurgents, the reprisals, in the execution of which not a soldier, sailor or Maroon was injured, were sanguinary indeed.

No single event perhaps more fully demonstrated the morbid condition of contemporary Jamaican society than the unsuccessful indictments laid one year after the rebellion against George Duburry Ramsay, Inspector of Police and Deputy Provost Marshal of St. Thomas in the East. He had awarded a sentence of flogging against George Marshall for a breach of some military regulation during martial law. "After the 47th lash, 50 being the sentence or order, Marshall smarting from the pain, turned towards Ramsay ..... and ground his teeth, whereupon Ramsay ordered "take him and hang him."[12] "Ramsay's case came before a Bench of Justices. They did not commit. It was then taken before a Grand Jury by the Attorney General. They ignored the bill. What seemed to tell in this case most strongly ..... was not so much the flagrancy of the act of the Grand Jury as its general acceptance by all classes of the

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11 Dutton op.cit. p. 315

12 CO 137/407 Report in the Jamaica Guardian of 22/4/1866 of Mr. Justice Ker's charge to the Grand Jury.

community as to what was to have been expected."[13]

As news of the rebellion and its suppression arrived in the Mother Country, public opinion fiercely divided over the rights and wrongs, and rival Committees were set up in England, some to instigate and institute proceedings against Eyre and others, others to defend the honour of their name and the justice of their conduct.[14] The Imperial Government acted swiftly. In January 1866 a Royal Commission, constituted of three persons of eminence, [15] arrived in the colony and after a painstaking and searching investigation of many aspects of Jamaican affairs, a carefully worded Report was submitted. "The causes leading to the determination to offer resistance were manifold"[16] but of these many causes two advanced by the Commissioners are of interest because of their influence upon subsequent reforms in the law and in the legal system:- (a) a principal object of the disturbers of order was the obtaining of land free from the payment of rent (b) an additional incentive to the violation of the law arose from the want of confidence generally felt by the labouring class in the tribunals before which most of the disputes affecting their interests were carried for adjudication.[17]

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13 CO 137/463/66 Grant to Kimberley 8/4/1872.

14 The Philosopher John Stuart Mill was a prominent member of the Jamaica Committee dedicated to the prosecution of Eyre. In the Eyre Defence Committee set up August 1866 were Carlyle, Ruskin, Dickens, Tennyson.

15 Sir Henry Stork temporary Governor replacing Eyre, Mr. Russel Gurney and Mr. I.B. Maule.

16 Dutton op. cit. p. 315.

17 Dutton op. cit. p. 315.

(B) Constitutional Change

The events of Morant Bay and its aftermath threw in clear relief for all to see the long standing weaknesses of Jamaica society and the Jamaica Constitution.

"There was no island or place in the world in which there had been so much of insurrection and disorder as the island of Jamaica, nor a place in which the curse which attaches to slavery both as regards the master and the slave had been more strikingly illustrated"[18], and the deep-seated causes of the rebellion no less than the summary manner of its suppression raised anew the long drawn-out question of the feasibility of the Old Representative System of Government. The need for radical political change, patently clear at the time of Lord Melbourne's Government, in 1839[19], had become inescapably imperative in 1865.

Not surprisingly, therefore, this climactic event in Jamaica effected a transformation in Imperial Policy. The new approach was enunciated within two months of the rebellion and left no doubt as to

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18 Observations of Lord Chief Justice Cockburn in R. V. Nelson (1867) See Dutton op. cit. p. 313.

19 See Chapter CO 137/434 - 14/9/1868 Henry Taylor Colonial Office "Lord Melbourne's Government saw clearly enough that to give the freed negroes a fair chance of civilization it was indispensable that the laws and institutions which had resulted from slavery and been adopted to it should be essentially and radically reformed ..... . They knew and had indeed found upon trial that no legislation for such purposes could be obtained from a Planters' Legislative and that if the negroes were to be trained in the way they should go, a new system of government must be substituted for the Planters' Legislature of Jamaica." The Bill was lost in 1839 and the new system of government was to come a generation too late.

the source of its inspiration. "If the fact of the revolt should lead to the re-construction of the legislature by its own act, the community may receive some compensation in future good government for the calamity with which it has just been afflicted. For many years the disposition and practice of the Crown has been rather to devolve on Colonial Representative Bodies the powers and responsibilities which had not hitherto belonged to it. But in a case in which local self-government is incompatible with the welfare and even the safety of the Colony, there would be no hesitation on the part of Her Majesty's Government, if called upon by the colonists, to accept such an amount of additional responsibility as the circumstances might seem to require."[20]

Eyre lost no time in bringing this Despatch to the attention of the Assembly. In November he had already urged them to put their house in order. They in their turn "deeply impressed with the full conviction that nothing but the existence of a strong government can prevent this island from lapsing into the condition of a second Hayti"[21] took the Governor's recommendation into debate and produced 29 V.C. II, "an Act to alter and amend the political constitution of the island." "The usual Jamaican difficulties and obstructions arising from personal considerations or private feelings"[22] once more resulted in a compromise measure "not representing the wishes of those in the House, nor still less

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[20] CO 137/394 Cardwell to Eyre 1/12/1865.
[21] CO 137/394/284 Eyre to Cardwell 8/11/1865.
[22] CO 137/396 Eyre to Cardwell 22/12/1865.

the wishes of the majority of the influential and intelligent colonists outside the Legislative Bodies who for the most part would rather see substantial power vested in the Crown through the medium of a purely Nominee Council."[23]

The timely arrival of the Imperial Dispatch in December seems to have extinguished finally the Assembly's already weakened determination to survive. After committing their final abuse of legislative trust by their Act of Indemnity protecting and indemnifying "all persons civil, miliatary and naval against the consequences of all acts done on or after the 13th of October, 1865 whether such acts were done in the martial law or not", the Assembly effected their own constitutional quietus.

Acts 29 V.C. 11 and 29 V.C. 24 (1866) by which the Old Representative System was abolished became "the most important Acts ever passed in the colony."[24] The Order in Council[25] giving effect to them was proclaimed on the 22nd of May, 1866 and two hundred and two years after its establishment, the Assembly, "the curse of Jamaica" formally expired. The old Council was also abolished and in their places "for legislative

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23 CO 137/396 Eyre to Cardwell 22/12/1865.

24 CO 137/422 (1) Grant to Carnarvon 8/1/1867. Whether a Colonial legislature has the legislative competence to abolish itself must be very doubtful. Its members could of course resign their seats. Constitutional niceties had been indulged long enough. In order to put the matter beyond controversy an Imperial Act 29 and 30 V.C. 12 (1866) "to make provisions for the government of Jamaica" adopted the colonial measures.

25 This Order in Council and some subsequent ones upon which the system of Crown Colony Government was founded were issued under power of the Imperial Act.

matters a new Legislative consisting partly of official and partly of non-official members was constituted in 1866 and for executive matters the Governor was advised on important questions by a Privy Council."[26] There was no political franchise and no elected members in the new system of Crown Colony Government. The consequences for the legal system were to be far-reaching.

(C) Reconstruction

The new Legislature, no longer impeded by the myopia of the planters, by the coloured and Jewish pressure groups, or by a legal profession "opposed by interest to inexpensive law"[27] applied themselves with purpose and consistency to the task of legal reforms.

Urgent as it was, however, thorough legal reform was, in the chaotic condition of public institutions in Jamaica, a work of time and careful planning, and there were preliminary measures demanding immediate attention as being indispensably necessary to shore up the foundations of the new policy upon which the reformed legal system should be established.

First of all, some governmental institutions other than "the thrice unutterable Assembly"[28] from which the legal system drew support had to be replaced by systems founded upon principles of integrity, efficiency and sound economy. Thus property in Crown lands, formerly the object of planter spoilation, was transferred

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[26] CO 137/442 (1) Grant to Carnarvon 8/1/1867. The first Legislative Council consisted of the Governor, six officials and three non-official members.

[27] CO 137/518/401 Norman to Derby 1/4/1884 (Conveying opinion of Mr. Justice Ker)

[28] Ibid.

to the Colonial Secretary, a high official who at the instance of the Crown replaced the Governor's Secretary.[29] To the Governor himself was transferred such powers as had been conferred by statute either upon the Executive Committee corporately, or upon individual members thereof, or upon the Governor and Committee, and thereby executive authority returned to the Executive Government.[30] in the person of the Royal Representative. Other powers of that abolished Committee fell to the Revenue Commissioner[31] who now submitted to the Governor those reports, statements, accounts, documents and so on which in former times were wont to be laid before the Assembly by the Executive Committee,[32] and Parochial Commissioners, called into existence by a minute under the hand of the Governor, displaced the parochial vestries[33] who had exercised local patronage, appointed collectors of petty debts and influenced the appointment of coroners and clerks of the peace and magistrates' clerks.

Steps to secure and preserve the revenue, matters indispensable alike to legal as to any other reform, commanded priority attention. Payments out of public funds were hereafter to be made by the Receiver General[34] under a warrant under the hand of the Governor and not otherwise, and Law 1 of 1866 not only increased the rum duty but provided security against tax evasion, whilst Law 7 of 1867 compelled planters at last under paid of forfeiture of their lands

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29 Section 5 of Law 8 of 1866 "for making alterations in the Law consequent on the constitution of the Legislative Council created by Order in Council of 11/6/1866.

30 See Chapter 3.

31 Subsequently other changes and re-organisation of course were made.

32 Section 7 of Law 8 of 1866.

33 Section 31 of Law 8 of 1866 "The vestries which were miniature

to pay their quitrents and thus to participate with the rest of the population in the necessary responsibilities of taxation.[35]

Some old institutions and some old functionaries had to give way to new and improved ones, but as the legal system was for the time being dependent upon them, their erosion was gradual. The coroner, that official anciently elected by freeholders, became a vice-regal appointee,[36] whilst the life of the Police Force of pre-rebellion creation, albeit incompetent, was extended for a year, as plans crystallised for its replacement by an effective agent of law enforcement. The salaries of the sinecure registrar in chancery[37] and those of the twenty imperious clerks of the peace and magistrates' clerks[38] received periodic statutory renewal whilst a scheme calculated to satisfy the recently vindicated principle of compensation for loss of office was being worked out.

The second measure of the new regime, Law 2 of 1866, "a Law to enable the Governor to appoint any justice of the peace a stipendiary justice and to give to such justice all the powers belonging to two justices of the peace sitting together "enabled the Chief Executive within the means of the States to fill those gaps in the administration of justice in the inferior courts which

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assemblies worked as badly as the Assembly and have met with as much public condemnation as the larger body on the same model." CO 137/408/76 Grant to Carnarvon 24/12/1866.

34 Section 9 of Law 8 of 1866.

35 See Chapter

36 Section 60 of Law 8 of 1866. District Court Judges were later made Coroners.

37 Eq.Law 13 of 1867 to amend and continue in force for a limited period the Registrar in Chancery's Salary Act.

38 Eq. Law 25 of 1867 and Law 41 of 1868.

had been an immediate cause of the rebellion of 1865 and which gubernatorial addresses to the Assembly in the quarter century last past had utterly failed to accomplish.

In addition to these urgent initial measures, others of more permanent character and involving heavier burdens of taxation or more fundamental institutional re-organisation engaged official attention.

The new administration had assumed the reigns of Government with a bankrupt Treasury. "At the commencement of my government" Grant informed the Colonial Office "I had an all but empty chest and a financial position worse than it had been the year before by £68238.10.11½.[39] As to the public debt it then stood at the alarming figure of £896203. 5. 3d.[40]

Return to prosperity, however, could not be induced except in the atmosphere of social peace and stability for "every disturbance, every instance of insecurity of life or property, every case of the fruits of industry plundered, tended to destroy those habits and that confidence on which the agricultural and commercial prosperity of rich and poor alike depended."[41] The situation in the immediate post-rebellion era therefore bespoke the urgent renovation of the institutions of Police and the Law Courts, those pillars of the security of organised society, and Grant "considered the obligation the Government was under to make reasonable provisions for the two

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39 CO 137/431/35 Grant to Buckingham and Chandos 25/2/1868.
40 Ibid.
41 CO 137/403 Grant to Buckingham and Chandos 6/8/1867

great objects of order and justice as paramount."[42] Thus positive burdens of taxation were resorted to in order to procure the necessary revenue.

Increased taxation, however, was not inconsistent with economy in public expenditure, and this essential principle did not escape official grasp. Extending beyond mere cheese-paring, true economy in public expenditure involved the principle of maximum efficiency in the public services at the lowest possible cost consistent with such efficiency, and in this connection it implied eradication of old systems, wasteful of man-power, time and money and their replacement by institutions giving full and gainful occupation to their personnel.

Some of the old institutions, of which the new administration inherited many, were centres of graft and corruption.[43] One such around which the operations of the legal system revolved and to which proliferation of courts, multiplicity of offices and the insoluble problems of jury service were attributable, was the parochial structure. "Each of the 22 parishes had its separate commission of the peace, its Custos Rotulorum, Clerk of the Peace, Clerk of the Parish Board, Collector of Taxes, Clerk of the Parochial

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42 CO 137/443 Grant to Granville 7/9/1869

43 Eg. Mr. P.A. Espent Custos of St. Thomas who was undaunted by the fate of his predecessor Baron Von Ketelholt whom Paul Bogle had slain. "In his hands as Custos was a sum of £545.15s. consisting of accumulated balances of monies drawn by him for pauper allowances to the amount of £486.5s. in excess of payment made by him, and a draft in his favour for Alms House Contingencies for £62. 10s. which had not been lodged in the Bank or accounted for." Espent died insolvent on 8/6/1868 and his son offered to pay 10/-d. in the pound. See CO 137/440 Grant to Granville 24/2/1869.

Board, Coroner and Rector, and a Circuit Court was held at its principal town or village. Great disparity existed in the size and population of the several parishes. Nearly one half of the island was divided into no less than 15 parishes, several of which were of unmanageable size; while the other half, those nearest the seat of government, was divided into no less than 15 parishes, several of which were extremely small. Thus the parish of St. Elizabeth had an area of 448 square miles and (in 1861) a population of 37177 souls, whilst St. Davids had an area of 76.1/2 square miles and (in the same year) a population of 6052 souls. Some of these parishes were so small that it was difficult to assemble at the sessions a sufficient number of competent and un-biassed jurors in cases of any interest,[44] and in such tightly controlled communities parochial patronage in the dispensation of Custodes and magistrates became as corrupt and inefficient as its imperial counterpart had been, whilst local jobbery and corruption rivalled on the lower scale the example of the House of Assembly.

By Law 20 of 1867 "the fifteen parishes near the seat of government were re-arranged and reduced to 7..... The whole island was divided into 14 parishes not very unequal in population and with the exception of the city and parish of Kingston, not very unequal in area",[45] the plan having been "to make each parish a

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[44] CO 137/436 Report of Heslop the Attorney General on Law 20 of 1867.
[45] Ibid.

complete system in itself in the judicial, revenue, police, immigration, pauper and medical departments."[46]

Such rapid re-organisation, however, was not possible for some establishments in the Public Service. Future policy of course dictated that "any new offices that it may be necessary to create under the new order of things, as they will be created solely in view of the public interest, would require the whole time of the holder to be devoted to his public duties,"[47] but unless removed by resignation, or death, old incumbents would either have to be dismissed with compensation for loss of office, a course which the economy could not in every case afford, be phased out gradually or be absorbed into the new structure of things as it slowly emerged.

Re-inforced by these initial arrangements Crown Colony Government provided the essential basis upon which Sir John Peter Grant, and his two immediate successors completed over the succeeding twelve years, the foundations and super-structure of a new legal system amid the gradual demolition and removal of the old.

Three stages in the programme, closely modelled upon past or contemporaneous reforms in the Mother-Country, were distinctly discernible; first, the restoration of a judiciary intermediate between the magistracy and the superior courts of law and equity; secondly, the assimilation of the procedures and powers of these superior courts, and finally the consolidation or fusion of the

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[46] CO 137/425/137 Grant to Buckingham and Chandos 20/7/1867
[47] CO 137/424/4 Grant to Carnarvon 8/1/1867.

courts themselves.

We shall in the succeeding three chapters treat in turn each of these developments.

CHAPTER XIV.

THE DISTRICT COURTS.

Within four months of his assumption of the Government the Chief Executive was ready with a plan "for affording the body of the people in those classes of cases in which they are interested Courts practically accessible, constituted so as to acquire their confidence and having a procedure simple enough not to be beyond their means." [1]. "Having both civil and criminal cases to provide for, having to distribute such a sufficient number of Courts over the island that no place will be too far from a Court, and having to give full occupation to each Court and to make the system as little expensive as possible," [2]. plans crystallised in the autumn of 1867 in the form of five laws, modelled to an extensive degree upon the English County Courts Act 1846, [3]. upon which, together with a number of successive ancillary measures to which attention will be paid in their appropriate places, the jurisdiction and

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1. CO 137/408/82 Grant to Carnarvon 26/12/1866
2. Ibid
3. 9 and 10 V C 95.

procedures of the District Courts as well as the powers and duties of their judicial and ministerial functionaries were founded.

Section 3 of Law 35 of 1867 "The District Courts Law" made it lawful for the Governor at any time to divide the whole island into districts and to order that a Court to be called "The District Court", a Court of Record, "shall be holden under this Law in each of such districts, and from time to time to alter such districts in such manner as to the Governor shall seem expedient, and to fix, and from time to time to alter, the place or places of holding such court, and to order that the holding of any such court at any place or places shall be discontinued or to consolidate any two or more districts: provided that there shall not be more than one District Court to each parish." In exercise of this power the island was originally divided into 8 districts in 1869, a number reduced the following year

to 7, [4.] and subsequently to 5, [5.] and actions could be brought in any district in which the defendant or one of the defendants was resident, or carried on business at the time of action brought, or at some time within six calendar months next before the time of action brought, or in which the cause of action arose. [6.]

Law 35 of 1867 provided in general terms, whilst Laws 36, 37, 38 and 39 of 1867 prescribed in detail the Common Law, Land, Equity and criminal jurisdiction respectively of the Court.

The Common Law Jurisdiction extended to all personal actions where the debt or damage claimed did not exceed fifty pounds, [7.] but parties could by written agreement confer upon the Court jurisdiction, irrespective of the quantum

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4. By Law 22 of 1870.The Districts were
(I) Kingston District which included Kingston,St.Andrews and the old parishes of St.George and Metcalfe.
(II) Spanish Town District which included St. Catherine and the old parish of Vere.
(III) Mandeville District which included Manchester and part of Clarendon.
(IV) Savanna-la-Mar District which included Westmoreland and St.Elizabeth.
(V) Montego Bay District which included St.James, Hanover and part of Trelawney.
(VI) St. Ann's Bay District which included St.Ann and St.Mary.
(VII) Port Antonio District which included Portland and St. Thomas.

5. In 1880.

6. Section 5 of Law 36 of 1867, the Small Causes Law.

7. Section 2 of Law 36 of 1867.

of the claim.[8] Further a plaintiff who had a cause of action in excess of £50 could, if he wished, abandon his claim to the excess in order to give the Court jurisdiction.[9] The Court also exercised an Exchequer jurisdiction with respect to "the recovery of all penalties and forfeiture to the Crown and of fines in the nature of penalties under our laws now or hereafter to be in force relating to the public revenue or otherwise.[10]

Land Jurisdiction. In land issues the Court's jurisdiction extended one mile beyond the boundary of the district,[11] and comprehended suits in ejectment for holding over or for arrears of rent, not exceeding £50.[12] Sections 12 and 13 of the District Courts Land Law 1867 provided remedies for the desparate problem of squatting.[13]

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8. Section 3 of Law 36 of 1867.
9. Section 7 of Law 36 of 1867.
10. Section 4 of Law 35 of 1867.
11. Section 3 of Law 37 of 1867.
12. Sections 5, 6 and 7 of Law 37 of 1867.
13. CO 137/433/75 Grant to Buckingham and Chandos 18/4/1868. (Conveying remarks of Attorney General Heslop on the District Courts Land Law 37 of 1867 - "The 12th and 13th Sections are of the most important character, and are designed to discountenance the prevailing system of squatting upon unoccupied lands without any semblance or even pretext of right." See also R.V.Royes and Heath : Stephens(Jamaica) Reports Vol.1.

The former gave to persons legally or equitably entitled to land the right to bring an action in the District Court in which it was situated for its recovery from the person in possession thereof without title from the Crown, or from any reputed owner,or without any right to possession prescriptive or otherwise. As many lands had been abandoned by owners whose whereabouts were unknown, Section 13 empowered the Crown to sue vicariously for the recovery of such lands, and enabled the true owhers within a period of seven years from the date of any order for possession to reclaim the same. There were saving provisions in respect of owners under disability.[14] Bona Fide disputes as to title to land were justiciable under Section 14 and by Sections 19 and 20 the Court could hear and determine actions in respect of rights of way, of water and of other rights and easements affecting private parties inter se or between private parties and the public. [15]

Equity Jurisdiction. Law 38 of 1867, the District

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14. i.e. minors and lunatics.

15. "As to Sections 19 and 20 I remark that the English Act 2 and 3 W M 4 C71 is not in force in this country but I apprehend the law as interpreted and admitted in England prior to the passing of that Act would be recognised here though notoriously the colony was established within the time of legal memory." CO 137/433/75 Grant to Buckingham and Chandos 18/4/68. (Conveying remarks of Attorney General Heslop)

Courts Equitable Jurisdiction Law 1867, an adaptation to local circumstances of the English Statute 28 and 29 V. C 97, was a legislative landmark in the history of the legal system inasmuch as for the first time in the history of the colony jurisdiction in equity was to be exercised in a Court other than the Court of Chancery. Power to hear and dispose of actions up to £200 in value was conferred in cases of administration suits, suits for execution of trusts, for foreclosure, for redemption or for enforcing by sale or otherwise, charges, liens and mortgages, and for specific performance and cancellation. The Court also exercised jurisdiction in proceedings for the relief of trustees, for the maintenance or advancement of infants, in partnership suits, and in matters of injunction where the same was necessary for granting relief in any matter in which jurisdiction was given to the District Courts or for stay of proceedings at law. For the effective discharge of these powers District Court judges were vested with the powers of the Vice-Chancellor, [16.] and if in the progress of a suit or matter in equity, it appeared that the subject matter exceeded in value the jurisdictional limits of the Court, no

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16. Section 3 of Law 38 of 1867.

decree or order already made was invalidated thereby, but the matter was required to be transferred to the court of Chancery for disposal and power was given to the Vice-Chancellor, upon application, to order continuance of the proceedings before the District Court despite the excess of jurisdiction. [17.]

Criminal Jurisdiction. By Section 6 of the District Courts Criminal Jurisdiction Law, Law 39 of 1867, the District Courts, unlike their counterparts, the County Courts in England, were vested with a wide jurisdiction to hear and determine numerous offences against person, [18.] and property, [19.] and by Section 7 the powers exercised by the Circuit Courts in the trial of these offences became exercisable by the District Courts. By Section 41 of Law 30 of 1868, [20.] express power was given to District Courts to hear and determine charges of forcible entry and detainer of land. In addition to these specific heads of criminal jurisdiction, every district judge

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17. Section 7 of Law 38 of 1867.

18. Section 3 of Law 39 of 1867 gave jurisdiction to the District Courts to try numerous offences under 27 V C 32, e.g., shooting with intent, unlawful wounding, administering drugs with intent, assaults, aggravated assaults, assaults occasioning actual bodily harm, concealment of Birth, etc., etc.

19. e.g., larcenies, robbery, burglary, false pretences, receiving, etc.,etc.

20. A Law to amend the Laws relating to the District Courts.

by virtue of his office as such was a justice of the peace for his district, and empowered to perform any duty by any law required to be performed by two or more justices of the peace. Hereby they acquired a wide summary jurisdiction. The limit of their penal powers was imprisonment for one year with or without hard labour and with or without solitary confinement or a fine of £50 or both.

Special Jurisdictions. In process of time the Legislature by a number of Laws entrusted these Courts with jurisdiction in a variety of matters. Of these jurisdiction in bankruptcy and in probate and administration deserve particular mention. Originally an Insolvent Court under Law 34 of 1868, the District Courts became three years later (Law 25 of 1871) the first Courts of Bankruptcy in the island, an appellate jurisdiction over their decisions having been reserved to the Supreme Court.

Six years later, [21] however, further alterations inthe bankruptcy jurisdiction of the Court were made. By Law 17 of 1877 the Supreme Court became the Chief Court of Bankruptcy, and the jurisdiction in bankruptcy of the District Courts was limited to estates below the value of £200. In such proceedings the Court was a Court of Law as well as of Equity, and the judge thereof exercised the jurisdiction and privileges exercised by a judge of a District Court in matters within the ordinary jurisdiction of such Court. In 1879 a Law of that year, [22] prescribed a new mode of procedure in bankruptcy applicable in all courts exercising jurisdiction in bankruptcy but District Courts were expressly excluded from a power to hear and determine

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21. CO 137/484/137 O.A.G. to Carnarvon 18/8/1877 (Conveying remarks of Attorney General O'Malley, Law 17 of 1877. By Law 25 of 1871 the District Courts were the only Courts of Bankruptcy and this fact not infrequently caused great inconvenience, e.g. (i) creditors largely in Kingston had to go to remote parts of the country to attend District Courts, (ii) District Courts had to administer a kind of business for which their machinery, if not absolutely unsuited, was much less suited than the Supreme Court. By Law 17 of 1877 the Supreme Court is made the Chief Court of Bankruptcy and given jurisdiction accordingly. Except in certain cases where the estate is below a certain limit or where for other reasons it may be desirable to proceed in the District Courts all Bankruptcy cases will be taken in the Supreme Court to be called for that purpose the Chief Court of Bankruptcy. Prior to Law 17 of 1877 the Supreme Court was merely the Court of Appeal from the District Court as a Court of Bankruptcy.

22. Law 33 of 1879.

misdemeanours committed under the Law.

Law 35 of 1868, [23.] gave to the District Courts a concurrent jurisdiction with the Court of Ordinary over the probate of wills and the administration of the personal estate, rights and credits of intestate deceased persons. This jurisdiction was limited to cases in which the personalty to be administered did not exceed £200, and the deceased person last thereto entitled had at the time of his death his fixed place of abode within the district. Sixteen years later the Probate of Wills Law empowered District Courts to grant probate of wills disposing of realty up to a value of £200. [24.]

Civil Procedure in the District Courts. Proceedings of a civil nature in the District Court were initiated not by a writ, but by a plaint disclosing the names and addresses of the parties and setting forth the nature and grounds of the debt or claim. Thereupon a simple summons embodying the subject matter of the plaint and accompanied by particulars

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23. A Law giving a limited jurisdiction to the District Courts in the Probate of Wills and Grants of Letters of Administration.

24. Law 13 of 1884, the Probate of Wills Law.

of the claim and bearing on the margin the identifying number of the plaint was issued out of the office of the clerk of the District Court, [25.] for service upon the defendant. [26.] There were no formal pleadings but the Law provided for the service of formal notice in writing of a limited number of particular defences. [27.] If upon the day named in the summons the parties appeared, the judge was required to call upon the defendant for his defence to the action and thereafter the trial proceeded without further pleadings or formal joinder of issue. Whenever the ends of justice seemed to necessitate a trial by jury in any action at law or upon any question of fact arising in the course of a suit in equity, it was in the power of the District Court judge so to order. [28.] The verdict of a majority of a jury of five males was the verdict of the Court, and as formerly, the qualifications for jury service were capacity to read and write and to be between the ages of twenty-one and sixty. [29.]

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25. See infra re Clerk of the District Court.

26. Section 4 of Law 36 of 1867. The records had to be sealed with the seal of the Court for which Section 37 of Law 35 of 1867 provided. The District Courts thus became the first Courts in the island to have theif own seal. In 1680 the Gentlemen of Jamaica petitioned the Lords of Trade & Plantation for a seal for the Supreme Court to which their Lordships replied "No seal appointed for other plantations and Public Seal may be used." See C B P Act 1677 - 1680 No.1588 - 12/11/1680, and No.1622 - 18/12/1680.

27. Section 15 of Law 36 of 1867.

28. Section 2 of Law 30 of 1868.

29. Section 43 of Law 35 of 1867.

The District Court judge was required to take notes of the evidence in all civil suits above the sum of £10. [30] and for the purpose of determining the real question in controversy between the parties wide powers were conferred to amend all defects and errors in any proceedings, whether there was anything in writing to amend or not and whether the defect or error was that of the party applying to amend or not and all such amendments could be made with or without costs in the judge's discretion. [31] The Plaintiff's evidence was expressly restricted to proof of matters related to the demand or cause of action specified in the summons. Provisions for arbitration, for payment into Court of moneys, for disposal of action upon non-appearance of either party, and for the re-opening of such proceedings were prescribed. In particular any judge of a District Court in any case or suit (except in criminal cases) had power to order a new trial upon such terms as he considered reasonable, and to order in the meantime and pending such new trial that the proceedings be stayed. [32]

Special provisions existed for the more expeditious

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30. Section 44 of Law 35 of 1867.
31. Section 59 of Law 35 of 1867.
32. Section 6 of Law 22 of 1870.

obtaining of judgments in actions of debts for sums in excess of £10, and the judges of the Supreme Court in matters of law, and the Vice-Chancellor in matters of equity, were respectively given power to make or amend general rules and forms governing the practice and proceedings of the District Courts and also for the keeping of all books, entries and accounts required to be kept by the Clerk of the District Court, and for settling the duties of the several officers of the Court. 33. Further in any case not expressly provided for by the said rules when made, the general principles of practice in the Supreme Court were to be adopted and applied at the discretion of the District Court judges to actions and proceedings in their Courts.

Judgments and Satisfaction. Whenever judgment was given in a District Court for a sum not exceeding £20, exclusive of costs, the judge was empowered to order such sum and costs to be paid at such time or times and by such instalments, if any, as he thought fit, and all such moneys were to be paid into Court; but in all other cases he was required to order payment of the full amount of the judgment either immediately or within 14 days, unless the parties should by consent desire otherwise.

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33. Section 47 of Law 35 of 1867 and Section 9 of Law 38 of 1867.

A writ of execution [34.] superseded the old writ of venditioni exponas and under it the Bailiff of the Court [35.] wasauthorised to levy, and after five days at least of such levy, to sell the goods of the judgment debtor (excepting the wearing apparel and bedding of such person or his family and the tools and implements of his trade to the value of £5) [36.] In addition to the writ of execution was the commitment summons upon which, after due enquiry into the means and conduct of the judgment debtor antecedent to and after his contraction of the debt, the judge could order his committal to prison for a maximum period of 60 days. [37.]

Criminal Procedure in the District Courts. Criminal cases appeared before the District Court judge either upon a committal for trial before him by a justice of the peace, [38.] or upon a charge, complaint or information laid either before a justice of the peace or before the judge himself in the same manner as the same might have been laid before a justice [39.]

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34. It was called a Warrant of Levy or a writ of Fieri Facias.

35. See infra

36. Sections 37 - 40 of Law 36 of 1867.

37. Sections 45 and 46 of Law 36 of 1867.

38. Section 8 of Law 39 of 1867.

39. Section 24 of Law 22 of 1870 later provided that "Any person desiring to lay any charge, complaint or information before the Judge of a District Court in accordance with Section 10 of the District Courts Criminal Jurisdiction Law 1867 may swear the same before any Justice of the Peace or Clerk of Petty Sessions."

In the former case, the justice was required to bind over or commit the person charged to take his trial at the next ensuing District Court for the district within which the justice of the peace was acting as such, "in the same manner and form and subject to the same conditions and restrictions in all respects or as near thereto as circumstances will permit, as are now observed when persons are bound over or committed to surrender or take their trial at the Circuit Court."[40]. Where the charge was laid before the District Court judge he could commit the accused person for trial before the Circuit Court, and in such committal proceedings Law 24 of 1872, [41]. adopting the provisions of the Russell Gurney's Act, required the judge to allow the evidence of witnesses for the accused to be heard, to permit cross examination of such witnesses, and to bind them over to appear at the trial in the same manner as witnesses for the prosecution. Upon committal by a District Court judge no bill of indictment was necessary to be presented to or found by the grand jury and the defendant could be tried convicted and punished upon the committal or binding over of the District Court judge "as fully and effectually to all intents and purposes as if the grand jury

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40. Section 8 of Law 39 of 1867.

41. The Criminal Law Amendment Law.

had found a true bill against him." [42] If, however, the judge was of opinion that the accused could lawfully be tried by him, he was empowered "to hear the evidence on both sides, in the presence of the parties, after affording both sides time, when necessary, for preparation, and he shall then adjudge the case and in all cases the judge of the District Court shall have the same power, in the issue of warrants and summonses and in the keeping of the accused person in custody or releasing him on bail or in his own recognizance, that one or more justices has or have or hereafter may have in like cases." [43] All proceedings in the District Court for conviction of any crime or offence whether at Common Law or under any Act or Law in force in the island and all proceedings for forfeiture or for the recovery of any penalty whether such proceedings were preferred by indictment or otherwise were prosecuted in a summary form without a jury. [44]

Indictments commenced as follows "It is hereby charged on behalf of our sovereign lady the Queen etc.,etc."

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42. Grand Juries were abolished in 1871. "The circumstances and social characteristics of this country differ greatly from those of England ... The population here is composed of different races and colours. Jamaica is in all respects as different from England as two places can well be .... an arrangement however rude and inconvenient may be free from actual evil in England but not necessarily equally free from actual evil in a colony as Jamaica" Such were the very sound arguments of Governor Grant. CO 137/457.

43. Section 10 of Law 39 of 1867.

44. Section 7 of Law 22 of 1870.

Section 9 of Law 39 of 1867, the District Courts Criminal Jurisdiction Law, introduced an important innovation whichhad its origin,on the one hand,in the fact that "the local magistrates were all more or less connected with each other by the ties of affinity, business relations or identity of interest" and,on the other hand,that "there was in consequence thereof a deep seated distrust of their impartiality among the labouring classes. [45.] That Section gave a mandatory right of election to be tried before a District Court judge to any person brought before one or more justices upon any summary matter, provided he exercised that right at the time that he was charged. [46.]

Case stated. Sections 15 to 17 of Law 39 of 1867 [47.] enabled a District Court judge in his discretion to reserve for the opinion of the Supreme Court any question of law which may have arisen on any trial for felony or misdemeanour. In either case the judge was required to state in writing the

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45. CO 137/518/384 Norman to Derby 16/9/1884 (Conveying views of District Court Judge Gibbon).

46. See R.V.Pitter Jamaica Law Reports 1934 - 1935
"Law 16 of 1873 repealed Section 9 of Law 39 of 1867 and substituted a similar Section (S.2.) and in addition imposed a duty on the Clerk to inform the defendant of his right of election. Law 22 of 1874 was the first law to consolidate the District Court Laws. Section 260 of this Law said that this Law should not affect the provisions of Law 16 of 1873 except as to Section 8 of that law" and as hereinafter provided. "This proviso modified the procedure but kept the right of election alive."

47. Sections 15 to 17 of Law 39 of 1867 were repealed and re-enacted by Law 25 of 1872.

question or questions of law which had been so reserved with the special circumstances upon which the same arose and to transmit same to the Supreme Court which was given full power to hear and finally determine the question or questions and to reverse, affirm, amend or avoid the judgment and to order an entry to be made on the record that in the judgment of the Court, the party convicted ought not to have been convicted, or to arrest the judgment, or to order judgment to be given thereon at some subsequent sitting of the District Court, if no other judgment had before been given, or to make such other order as justice may require. The judgment of the Supreme Court had to be given in open court after hearing counsel or the parties and the case could be sent back for amendment if the Supreme Court saw fit and it was lawful for the court to order a new trial. In addition, wide powers were conferred upon the Supreme Court to amend defects and errors in any indictment or proceeding brought before it under reference from the District Court, whether such amendment could or could not have been made at the trial and all such amendments as were necessary for the purpose of determining the real question in controversy could be made.

Appeals from the District Court. An appeal in civil matters lay from the District Court to the Supreme Court,[48]

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48. Section 26 of Law 36 of 1867; Section 27 of Law 37 of 1867.

or to the Court of Chancery [49.] or Ordinary,[50.] dependent on the particular jurisdiction invoked in the lower court. Generally speaking, an appeal was allowed upon any point of law or upon the admission or rejection of any evidence bearing upon the facts or upon the question of the finding upon such facts being founded upon lawful evidence or legal presumption or upon the question of the sufficiency of the facts found to support the judgment or upon the question of costs; but no appeal was allowed upon the finding of a judge of a District Court upon questions of conflicting evidence. [51.] An appeal could also take the form of a case agreed upon by both parties, or their attorneys or agents.

Rules of procedure regulating the manner and time within which appeals should be lodged and the making of deposits for security for the costs of appeal and for staying proceedings on judgments were prescribed.

The Appellate Court could either affirm, reverse or amend the judgment of the District Court or order judgment to be entered for either party as the case may require or remit the same to the judge of the District Court with instructions, or for re-hearing

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49. Section 10 of Law 38 of 1867.
50. Section 15 of Law 35 of 1868.
51. e.g. Section 26 of Law 36 of 1867.

generally, and could also make such orders as to costs of the appeal as the Court thought proper. No judgment of a District Court could however be altered or reversed either upon a point which had not been raised at the trial by the appellant or where the effect of the judgment had been to do substantial justice between the parties. [52.]

On an appeal under Law 36 of 1867, the Small Causes Law, which allowed appeals only in respect of sums over £10, the Supreme Court could order a non-suit to be entered, if the case should seem to the Court to require such order.

Criminal appeals from the District Courts were regulated by Section 18 of the District Courts Criminal Jurisdiction Law and by the provisions of an amending Law of 1870. Under the former an appeal lay from the decision of a judge of the District Court to the Supreme Court for matters of law only and not for matter of fact, and had to be lodged with the Clerk of the Court within 7 days from the date of such judgment and bore a stamp duty of ten shillings. Under the latter law the Supreme Court was empowered to amend any informal indictment or conviction and generally any error on the record, if it appeared to the Court that such informality or error was not

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52. Section 26 of Law 36 of 1867.

material to the merits of thecase and that the defendant could not have been prejudiced thereby in his defence on such merits.

District Court Judges. Members of the English or Irish Bar or of the faculty of Advocates of Scotland were, without qualification as to standing or practice at the Bar, eligible for appointment as judges of the District Courts. Originally in the power of the Governor in his own right, [53.] appointments to the District Court Bench were by Law 6 of 1869 vested for the future in the Crown, and although these judicial offices were in the terms of the Law open to Jamaicans "the desirability on general principles that these judgeships should be filled by lawyers who had no previous connections with the island" [54.] excluded in practice the appointment thereto of nominees from the local and scanty Bar. District Court judges were eligible for appointment as Supreme Court Judges, were required to reside in their districts and were not allowed to practise at the Bar, to be directly or indirectly concerned in mercantile pursuits or in the care or management

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53. Section 7 of Law 35 of 1867.

54. CO 137/427 Buckingham and Chandos to Grant 14/12/1867. Grant had earlier written "Having amongst them competent men of good character I thought they might consider it a slight if their (the Jamaica) Bar were wholly passed over" in the selection of apparities to the District Court Bench. Imperial policy was firm and no Jamaican ever received a permanent appointment to the Bench, and this was made a reason for opposition to the Court. See infra p.

of any estate or be the proprietor or lessee of land (save and except for the purposes of residence) in the district in which he held his appointment.

Until repealed by Law 22 of 1870, [55.] Section 8 of the District Courts Law provided that the duties of the judge of the District Court of the district in which the City of Kingston was situated should be discharged by one or other of the assistant judges of the Supreme Court and whilst so acting he was not required to hold Circuit Courts or to sit except in cases of necessity in the Supreme Court or to act as Coroner or to act as a justice of the peace in his District Court.

Official Staff. Besides the District Court Judge each district had its Clerk of the District Court, a number of assistant Clerks, a bailiff and an assistant bailiff at each of the out-stations in the district. The principal duty of the Clerk of the District Court was to conduct the criminal

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55. Section 20 of Law 22 of 1870 provided that "Any person duly qualified to be a Judge of a District Court, according to Section 7 of the District Courts Laws 1867 may be appointed to be Judge of the District Court as now or hereafter constituted, wherein the City of Kingston is situated; and the Governor shall have power, whenever he shall see fit, to appoint any person now holding the office of Judge of a District Court under that Law, or any person hereafter to be duly appointed to the office of a Judge of a District Court, to be judge of the district as now or hereafter constituted, wherein the City of Kingston is situated.

prosecutions in the District Courts of his district.[56] His administrative duties included the issuing of summonses, warrants, precepts and writs of execution. He kept the registers of orders and judgments and was responsible for the proper keeping of the accounts of fees, fines and suitors moneys paid in and out of his office. Every clerk of the district court was by virtue of his office, a justice of the peace qualified to do every ministerial act of which a justice of the peace was competent, but could not sit in Petty Sessions to hear and determine cases judicially or to make proclamations authorised and required to be made under the Riot Act of 1857 (21 V C 11). Clerks of the District Courts, despite the technicality and importance of some of their duties, were not required in law to be trained lawyers, but in practice, most were attorneys, recruited from among the Clerks of the Peace and Magistrates' Clerks whose offices were finally abolished in 1870. Clerks of the District

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56. Each District Court had a number of out-station Courts. Thus when in 1870 there were 7 District Courts, the stations of the Kingston District Court were Kingston, Annatto Bay, Buff Bay, Gordon Town, Stony Hill and Richmond and for the Spanish Town District, Spanish Town, Alley, Old Harbour, St.John and Linstead. See Jamaica Gazette 9/6/1870.

Courts received salaries between £200 and £400.

The Bailiff of each District Court discharged within his district with the aid of his assistants the duties of serving summonses, orders and executing warrants, precepts and writs whether issued out of the Court of his district, or of another district. [57] Until 1872 Bailiffs of the District Courts were, by appointment of the Provost Marshal General, his deputies for the execution within their districts of the processes of the Supreme Court. In that year, however, upon the death of the last patent-holder, the office of Provost Marshal General was abolished, and it was provided by Section 5 of the Abolition Law (Law 35 of 1872) that "all writs of execution and other writs and all legal process which if the Law had not been passed, ought to have been executed by the Provost Marshal shall, after the coming into operation of this Law (1/11/1872) be sent for execution by the Clerk or Registrar of the Court issuing the writ or process to the Clerk of the District Court for the district within which the subject of the writ or process may then be and shall be directed to the Bailiff of such Court, and the duties hitherto performed by the Provost Marshal and his deputies with respect to the service,

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57. Section 21 of Law 35 of 1867 and Section 22 of Law 30 of 1868.

execution of, and return to such writ and process and otherwise with regard to such writs and process shall be performed by such Bailiff." Bailiffs of the District Courts thus became Bailiffs of the Supreme Court in respect of service within their districts of processes of the Supreme Court directed thereto for service and instead of one Sheriff for the whole island there were as many Sheriffs as there were jurisdictional districts.

CHAPTER XV.

THE SUPERIOR COURTS OF LAW AND EQUITY 1867 - 1879

(i) The Court of Chancery.

It had always been a feature of official policy that "the question of the reform of the procedure of the Supreme Court should stand over until it had first been ascertained by the legislative enactment of the intended Parochial Courts and legislative definition of the boundaries of the jurisdiction of the Courts what residium of cases was still left to the original jurisdiction of the Supreme Court." [1.] With the establishment of the District Courts throughout the island in mid-1869, [2.] the Chief Executive, fortified with the First Report of the Judicature Commission in England, then directed his attention to "the existing superior tribunals here both of common law and of equity jurisdiction" both of which "but most especially the latter urgently require a thorough reform conducted in the spirit of the best school of law reformers." [3.]

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1. Articulated by Mr.Justice Ker. See CO 137/425 Grant to Buckingham and Chandos 1867.
2. CO 137/442/156 Grant to Granville 8/7/1869.
3. CO 137/441/123 Grant to Granville 4/6/1869.

Reform began first in the Court of Chancery, which, as we have already seen, had since 1840 been presided over by the Chief Justice as Vice-Chancellor, [3a.] and so it will here receive prior notice. It took two forms; first, the adoption of measures calculated to eliminate waste of human resources and of money and of estates in Chancery and to prevent protraction of litigation and to diminish their high cost; secondly, the merger of offices and the assimilation of the procedures of the Court with those of the Supreme Court.

Decrease of business in Chancery had resulted in a situation wherein the fees received by stamps yielded only between £300 and £400 per annum whilst the salaries paid to the Registrar in Chancery and his clerk were £600 and £300 respectively "figures wholly disproportionate to the amount of work done and to the stamp paid in respect of it into the Public Treasury." [4.] With effect therefore from the first of August 1868 the offices and places of the Registrar in Chancery and clerk of the patents and of the clerk of the Supreme Court and Crown were abolished, and provisions were made for the appointment of an officer styled "the Registrar

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3a. See Chapter 9.

4. CO 137/431/31 Grant to Buckingham and Chandos 24/2/1868.

and Clerk of the Court and Crown", a barrister of three years' standing, or a solicitor of six years' practice in the island, who should thereafter discharge the duties of the combined offices. [5.] Three years later the sole remaining office of Master in Chancery [6.] was abolished and the powers, jurisdiction and authorities formerly possessed by this Officer were transferred to the Vice-Chancellor.

As the Court of Chancery from earliest times entertained suits at law, resolved in its own right disputed points of law without reference to the Supreme Court and awarded damages, [7.] adoption in Jamaican Laws of provisions to these ends contained in the English Chancery Procedure Act 1852 and the Chancery Amendment Act 1858 (known as Lord Cairns' Act) was not necessary, [8.] but there still remained other areas in which, with a view to the ultimate

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5. S.S.2 and 30 of Law 28 of 1868 "to consolidate the offices of the Registrar in Chancery and Clerk of the Patents and of the Clerk of the Supreme Court and Crown".

6. S.1 of Law 20 of 1871, an adaptation of the English Act 15 and 16 V C 80. "At the time of the new Constitution there were only two Masters left. One of these withdrew in 1869 in consequence of his having been committed to prison by the Vice-Chancellor for malversation in a cause before the Court" CO 137/458/127 Grant to Kimberley 7/9/1871 (Conveying Attorney General Schalch's Report on the Law)

7. See Chapter 4.

8. See Gloucester House Ltd. v Piskin (1961) W I R 375.

fusion of the two systems, greater identification of the procedures of the Court of Chancery with those of the Supreme Court could be achieved. Law 25 of 1869 accomplished this assimilation and in addition, adopting other provisions of the Court of Chancery Act 1850 of England, introduced measures calculated to diminish delay and expense of proceedings in the local court.

Firstly, a virtual revolution was effected in the manner of taking evidence in Chancery. The Court, if it saw fit to do so, was empowered to order the production and examination of witnesses before it. Furthermore, even if the usual affidavit evidence was used, either party had a right to cross-examine his adversary's witnesses before the Court, and the latter in such an event was entitled to re-examine his witnesses. [9] Next, it was provided that parties to any suit in Chancery could agree upon stating a case for the determination by the Court of isolated issues of construction of statutes, wills, deeds or other instruments in writing, [10] and that executors and administrators could apply by summons at Chambers for accounts to be taken concerning the debts and

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9. S.11 of Law 25 of 1869, "The Court of Chancery Act."
10. S.19 of Law 25 of 1869.

liabilities affecting the personal estates of deceased persons. Thereby estates were preserved from the delays and expense of protracted and wasteful suits in Chancery. [11.] Objections for want of parties could no longer be raised in a number of circumstances prescribed by Law and the Vice-Chancellor now heard, as the Master hitherto did, all exceptions for insufficiency and all objections for prolixity, scandal or inpertinence, to petitions, affidavits in answer or other proceedings in his Court. Misjoinder of petitions no longer afforded grounds for delay or dismissal of a suit, nor could objections any longer be taken on the ground that a mere declaratory order or decree was sought, [12.] and in order to render the Court better able to determine any matter at issue in any cause or proceeding the Court was given power to enlist the assistance of accountants, merchants, engineers, actuaries or other scientific persons. [13.]

The Vice-Chancellor's control over his staff was also strengthened. The Act that abolished the office of Master

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11. S.43 of Law 25 of 1869.
12. S.S. 52 and 53 of Law 25 of 1869.
13. S.59 of Law 25 of 1869.

and vested his powers in the Vice-Chancellor also enabled the latter "to order what matters and things shall be investigated before the Registrar, either with or without its direction during their progress and what matters and things shall be heard and investigated by the Court; and particularly if the Court shall so direct, the Registrar shall take accounts and make such inquiries as have usually been prosecuted before a Master, and the Court shall give such aid and assistance in every and any such account or enquiry as it may think proper." [14]. To obviate the former mal-practice of decrees and orders being entered up behind the back and without the knowledge or consent of the Vice-Chancellor, the Registrar was required "to take down in open Court, in a book to be by him kept for such purpose, a minute of the judgment or decretal or other order of the Court upon any order being made, or judgment given in Court in any suit, and such minute shall bear date and be signed by such Officer of the day when it was taken down, and such minute so taken down, dated and signed, shall be read out to the parties in Court, and shall, unless corrected by the Court within 10 days after such minute is taken down, be deemed to be the basis on which such decretal or other order or judgment is to be entered in the suit." [15].

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14. S.7. of Law 20 of 1871.

15. S.18 of Law 28 of 1868. Similar provisions also existed in respect of orders made in Chambers by the Vice-Chancellor.

One particular jurisdiction to which the Court of Chancery acceded may here be conveniently mentioned. Until 1873 there was absolutely no statutory provisions whatever in Jamaica on the subject of lunacy. The Court of Chancery had jurisdiction to issue writs "de lunatico inquirendo" and the Governor under a special delegation from the Crown (contained in his Instructions down to 1846) could grant the custody of a person and property of lunatics, when so found by inquisition, but in consequence of the total absence of legislative enactments on the subject of lunacy, there was great difficulty in putting the jurisdiction of the Court of Chancery and the Governor into operation, and in fact there did not exist any sufficient means for the due protection of the persons and property of lunatics. This deficiency appeared conspicuously in a case [16.] before the Vice-Chancellor in 1870 in which an application was made for the sale of a portion of the property of a lunatic and it was admitted that such a sale ought, if possible, to be made, but the Vice-Chancellor was compelled reluctantly to dismiss the application on the ground that he had no jurisdiction to order the sale.[17.] Law 4 of 1873 "to vest in the Court of

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16. Re Estate of Ann Augusta Burke of Kingston. CO 137/451/240 Grant to Kimberley 15/11/1870.

17. CO 137/470/57 Grant to Kimberley 28/3/1873.

Chancery jurisdiction to deal with the custody and management of idiots and lunatics and their estates in this island, and to amend the practice in proceedings in lunacy" removed this grave jurisdictional defect. It conferred upon the Court of Chancery power to deal with the custody and management of lunatics and of their estates within the island, and to appoint Committees of their persons and estates, or of their persons or of their estates, and for that purpose to inquire into, hear, determine by all ways and means by which the truth may be best discovered, and to act in all cases concerning lunatics and the custody and management of their persons and estates as fully to all intents and purposes as the Lord High Chancellor of England or the grantee from the Crown of the persons and estates of idiots, lunatics and persons of unsound mind may lawfully act in England. [18]

(ii) The Superior Courts of Law.

Legislative activity was most intensive in the years between 1870 and 1872 and it affected not only the judicial and official staffs but the practices and procedures of the Supreme Court in its civil and criminal jurisdiction.

We have already seen that in 1868 the offices of the Registrar and Clerk of the Court and Crown replaced the separate

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18. Section 2.

offices of Registrar in Chancery and Clerk of the Court and Crown. In 1870 [19] the offices of the Clerk of the Peace and Magistrates' Clerk were abolished and in respect of their former duties as prosecutors in the Circuit Courts two Assistants to the Attorney General were appointed who together with the Attorney General were responsible thereafter for the conduct of criminal cases at Circuit. For the discharge of the administrative duties of the Circuit Courts, hitherto discharged by Clerks of the Peace, such as calling the jurors and parties, presenting, receiving and proclaiming bills of indictment from the grand jury, arraigning prisoners, receiving verdicts and so on, Law 1 of 1870 "to provide for prosecutions in the Circuit Court" authorised the appointment of Attorneys at Law of the Supreme Court as Clerks of the Circuit Court.

The constitution of the Supreme Court underwent rapid reduction. Upon the retirement at the close of the year 1869 of the Chief Justice [20] and of Mr.Justice Kemble, opportunity was taken to reduce the complement of the Court to three, a Chief Justice and two Assistant Judges "who shall hereafter be designated as Puisne Judges, but whose offices, duties and powers shall remain the same as heretofore.[21] Two years

19. Law 3 of 1870 to abolish the offices of Clerk of the Peace and Clerk of the Magistrates and to make better provisions for the discharge of Magisterial Duties.

20. CO 137/441/123 Grant to Granville 4/6/1869. "Chief Justice Bryan Edwards desires to retire in consequence of his increasing deafness." Mr.Justice Kemble was a native of Jamaica.

21. Section 1 of Law 2 of 1870.

later upon the death of Mr. Justice Cargill, the Court was constituted of one Chief Justice and one Puisne Judge, and it remained so constituted until 1880. [22] Qualification for membership of the Bench was altered, the manner of their appointment changed and their salaries improved. No longer was practice at either the local, English, or Irish Bar a sine qua non. Law 41 of 1869 which increased the salary of the Chief Justice from £1800 to £2000 also provided that any member of the Bar of England, Scotland or Ireland of at least five years' standing may be appointed Chief Justice or Assistant (Puisne) Judge of the Supreme Court. That same Law placed appointment of the judges in the Crown and no longer in the Governor, whilst Law 18 of 1872 increased the salary of the Puisne Judge from £1200 to £1500 per annum, and placed the facilities for leave of the judges "on the same footing in all respect as other public officers." [23]

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22. The Judicature Law NO 24 of 1879 by which the constitution of the Court was increased to 3 came into effect on the first of January 1880.

23. The House of Assembly had been resolutely opposed to providing pensions for its public servants. Regulations, however, under an Imperial Statute 4 & 5 W 4 C 24 S.12 provided pensions for Colonial Officers transferred from or to Jamaica, and in 1869 a Circular Dispatch to the Colonies suggested local legislation in implementation of the regulations CO B7/450. See CO 137/451/193 Rushworth OAG to Granville 20/8/1870. "Ex Chief Justice Edwards to get £692. 8/-. per annum as pension: Salary £1800: 13 years' service: add 10 years: total 23 years. Got £2000 per annum for a short time."

Reference has already been made to the appointment in 1870 of two Assistant Attorneys General. Contemporaneous with that innovation, alterations were made in the arrangement of the Circuits. Law 2 of 1870 "to reduce the number of Assistant Judges of the Supreme Court of this island and to provide for compensation to one retiring judge and to alter the number of and the times and places of holding the several Circuit Courts of this island" repealed the provisions of Law 20 of 1867 by which, in consequence of the reduction of the number of parishes from 22 to 14, the number of places at which Circuit Courts were held were reduced to 13. [24] In lieu of those provisions, Law 2 of 1870 divided the island into two circuit areas, the Eastern and Western Circuits, established six Circuit stations, and provided for the holding of circuits three times per year, each session taking place in the intervals

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24. There were then three Circuits, the Home, for Kingston, St.Andrew and St.Catherine, the Eastern for St.Thomas, Portland, St.Mary, St.Ann and Clarendon, and the Western Circuit for Manchester, St.Elizabeth, Westmoreland, Hanover, St.James and Trelawney. Vide S.13 of Law 20 of 1867.
See Jamaica Gazette 3/6/1869 for Fixtures for Western Circuit
Manchester - at Mandville 23/6/1869 Circuit to sit 4 days if necessary.
St.Elizabeth - Black River 28/6/1869 - 4 days if necessary.
Westmoreland - Savanna-la-Mar 2/7/1869 4 days if necessary.
Hanover - Lucea 7/7/1869 4 days if necessary.
St.James - Montego Bay 12/7/1869 6 days if necessary.
Trelawney - Falmouth 19/7/1869 6 days if necessary.

between the sittings of the Supreme Court in February, June and October.[25].

Law 24 of 1872 "the Criminal Law Amendment Act" simplified the facilities for obtaining a special jury in criminal trials at Circuit, made provisions for the assignment of Counsel for the defence of persons charged with capital offences, and considerably enlarged the powers of the court to amend defects in proceedings before it for the purpose of determining the real question in issue. Circuit Courts continued to hear appeals from justices and it was now provided that no judgment, order or conviction of justices in any criminal proceedings was to be reversed or qualified upon appeal before the Circuit Court for any error or mistake in the form or substance of such judgment unless the point was raised at the original trial or the Circuit Court was of opinion that such error had or may have caused injustice to the accused.

Lastly, in respect of the criminal jurisdiction of the Circuit Court reference must be made to Section 1 of Law 25

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25. Circuit Courts were then held at Kingston, Bath, Mandeville, Savanna-la-Mar and Black River alternately, Montego Bay and St.Ann's Bay. S 4 of Law 2 of 1870. This system lasted until 1880.

of 1872. Formerly, the only way in which difficult questions of law could come before the Supreme Court from the Circuit Courts was by the accused moving for a new trial [26.] or to quash the indictment. The judge had no power to raise the question on a point of law. This Section, however, empowered Circuit Court judges, in their discretion, to reserve for the determination of the Supreme Court any question of law which may have arisen in the course of any trial for treason, felony or misdemeanour. When a case was so reserved, the Supreme Court had power, if it saw fit, to cause the case to be sent back for amendment and thereupon the same was required to be amended accordingly, and thereafter the judgment could be delivered.

The powers of the Supreme Court under this Law were wide. It could order a new trial, or reverse, affirm, amend or avoid the judgment and if it sawfit, could amend all defects and errors in any indictment or proceeding brought before it under the Law, whether such amendment could or could not have been made at the trial, and all such amendments as may be necessary for the purpose of determining the real question

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26. See Chapter 9.

in controversy could be made. In short "the effect of the Law was to give to the Supreme Court the jurisdiction now possessed by the English Court for the consideration of Crown Cases Reserved and the power of the judge at Circuit to reserve cases at trial will be the same in Jamaica as in England." 27.

Civil Procedure in the Supreme and Circuit Courts

Reporting in August 1872 on Law 41 of 1872 "for the amendment of procedure of the Supreme Court of Judicature" the Attorney General said : "This Law is the same as the three English Common Law Procedure Acts of 1852, 1854 and 1860 with their Schedules and it also contains a Schedule fixing the fees for all proceedings in the Supreme Court, Circuit Courts and at Judges' Chambers. The general Rules Practice and Procedure in pleading as in substantive law have hitherto been substantially the same in Jamaica as in England, subject of course to occasional differences caused by local legislation. Since the passing of the English Common Law Procedure Acts there has been more difference between English and Jamaica Practice than before that time in consequance of these three Statutes having been only partially accepted in Jamaica. At the present time the practice and procedure in the Supreme and Circuit Courts

27. Blue Book 1871 - 2.

and at Judges' Chambers may be roughly stated to be the practice and procedure in England before the passing of the Common Law Procedure Acts subject to the two Jamaica Statutes 27 V C 14 and 28 V C 37 each of which embodied fragments of the three English Statutes, e.g., the old English Act of Ejectment with its absurd fiction of Doe and Roe etc. is still in use here and will continue in use here until this Law comes into operation."

"This Law repeals and re-enacts the two Jamaica Statutes in the form and order in which those provisions stand in the English Statutes and follows as closely as possible both in arrangement and in wording the three English Common Law Procedure Acts, although in some instances it has of course been necessary to depart from the wording of the sections of those Acts. In the substantive provisions a few deviations from the English model have been made." [28].

It only remains therefore to remind ourselves what some of those changes were. Forms of action were abolished and it was expressly provided that it was no longer necessary to mention any form or cause of action in the writ of summons by which proceedings in the Court were initiated. The ancient

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28. CO 137/464/172 Grant to Kimberley 22/8/1872 (Conveying Attorney General Schalch's Report on Law 41 of 1872.

Jamaica practice of filing the declaration with the writ of summons was left undisturbed. English provisions for obtaining summary judgment were adopted. Sections 18 and 19 of the local Law had no parallel in the English Statutes. The former dealt with the service of writs upon absentees and the latter upon persons residing out of Jamaica but carrying on business in Jamaica and allowed service of writs and of all subsequent proceedings upon an Agent and was suggested by the Chief Justice who stated that "he had found the somewhat similar provision in Ordinance 26 of 1855 S.25 of British Guiana had worked well there." [29]

Misjoinder or non-joinder of parties which hitherto might have been fatal to an action at Common Law no longer carried such terrors. Sections 36 and 37 empowered the Court to make orders for the removal of unnecessary, and for the addition of necessary, parties to the action. Likewise, causes of action of whatever kind, provided they were by and against the same parties and in the same rights could now be joined in the same suit, except in actions for replevin or ejectment, but power was reserved to the Court to prevent the trial of different causes of action together if such trial

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29. CO 137/464/172 Grant to Kimberley 22/8/1872 (Conveying Attorney General Schalch's Report on Law 41 of 1872.

would be inexpedient.

Archaic Survivals were swept away. Thus fictitious allegations of losing and finding in actions of trover, of bailment in actions for goods or their value, statements of acts of trepass having been committed with force and arms and against the peace of our Lady, the Queen, and statements of promises in indebitatus counts and mutual promises to perform agreements, were rendered unnecessary.[30] Either party could object by demurrer to the pleading of the opposite party, on the ground that such pleading did not set forth sufficient ground of action, defence, or reply, as the case may be; and where issue was joined on such demurrer the Court could proceed and give judgment according "as the very right of the cause and matter in Law appeared unto them" without regarding any imperfection, omission, defect in or lack of form, and no judgment was to be arrested, stayed or reversed for any such imperfection, omission, defect in or lack of form.[31] Doe and Roe received their stroke of grace at the hand of Attorney General Schalch," [32] and technicalities were avoided by the law which allowed the pleading of several matters by a plaintiff ~~or~~

30. S.51 of Law 41 of 1872.

31. S.52 of Law 41 of 1872.

32. Handbook of Jamaica 1881. Article on "The Administration of Justice by Mr.Justice Ker p.199.

or defendant without first obtaining leave of the Court or judge.

Two particular provisions, calculated to secure the dispatch of judicial proceedings and to save time and expense, must be noticed. When parties were agreed as to the question or questions of fact to be decided between them, they could, after writ filed and before judgment by consent and upon an order of the judge (which order a judge had power to make on being satisfied that the parties had a bona fide interest in the decision of such question or questions and that the same was fit to be tried) proceed to trial of any such question of fact without formal pleadings. [33.] Similarly, any question of law could in similar circumstances be submitted in the form of a special case for the opinion of the Court without any further pleadings, [34.] and in actions in which it appeared to the Court or judge that the amount of damages sought to be recovered was substantially a matter of calculation the judge was empowered to direct an assessment before the Clerk of the Court and to dispense with a jury trial. [35.]

The powers of the Court of Chancery to compel discovery

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33. Section 44 of Law 41 of 1872.
34. Section 48 of Law 41 of 1872.
35. Section 97 of Law 41 of 1872.

of documents in the possession of a party to the action and to administer interrogatories were extended to the Supreme Court, [36] and the systems of Law and Equity were brought still closer by the adoption of the provisions of the English Statutes empowering Courts of Law to entertain equitable defences such as mistake, accident and certain types of fraud and to grant the equitable remedies of specific performance and injunction.

Finally it should be mentioned that as early as 1868 the common law rule which had prohibited parties and their spouses from giving evidence was abolished and that with exceptions they became competent and compellable witnesses "in any suit, action or other proceeding in any court of justice." [37]

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36. S.S. 233 and 234 of Law 41 of 1872.

37. Section 2 of Law 11 of 1868 provided that "Nothing herein shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband in any criminal proceeding, or in any proceeding instituted in consequence of adultery." The third section ran as follows : "No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage."
See also CO 137/229 for case of Rosanna Morgan v. Dr.B. Whittaker, Justice of the Peace for assault - August 1838. Dr. Whittaker wished his wife to give evidence on his behalf. Court ruled "It was a rule in Law that a husband could not be a witness for or against his wife, nor a wife for or against her husband, a rule arising from the identity of interest subsisting in such a connexion."

(iii) The Incumbered Estates' Court.

We learn from Long that in Jamaica "few planters choose to parcel out their plantations among their children, as is done in the Northern Colonies, because their properties are not easily severable; and therefore are transmitted whole and un-divided to one child to preserve them in the family, but they are burdened with annuities or fortunes payable to the children generally sufficient to maintain them in England." 38.

In the palmy days of slavery the evils inherent in this system of primogeniture and entails did not prominently manifest themselves. 39. In the circumstances of a large country and the relative fewness of white colonists who alone were entitled without restrictions to own or to inherit land, 40. the tendency for over a century after the settlement was towards greater and greater land monopolisation. With the abolition of the slave trade in 1807, however, and the decline of sugar, the inevitable reactionary tendency accelerated. Inalienability and the stranglehold of burdensome concurrent and consecutive interests caused a flight from the land. More and more estates

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38. Long Op.cit. pp.510 - 511.

39. But see Ratcliffe v.Reid: Grant's (Jamaica) Reports p.8. and Barrett v. Lousada: Grant's (Jamaica) Reports p.39 on the subject of "Docking of the entail". See also V.B.Grant : Jamaica Land Law (1957) p.11.

40. See Chapters 3 and 5.

were either being abandoned or fell into receivership.

The complicated nature of title-deeds which made it difficult to show a clean and valid title confused and confounded the problem. The consignee's lien, [41.] that old appendage of the system of colonial credit, made its contribution to the paralysis of the land inasmuch as "a lien upon an estate and the produce thereof, is prejudicial to the proprietors thereof who may have occasion to borrow money on the security of such estate by rendering it difficult to obtain the required advances from any person other than the merchant who acts as consignee of the produce of such estate and is moreover productive of great hardship and injustice in many instances to mortgagees and others who have advanced money on the security of the estate." [42.]

To cut through the legal entanglements by which utilisation of the land was being stifled, the Vice-Chancellor proposed a Bill in 1844 granting the Court of Chancery power to grant leases of limited duration over estates in receivership. Very soon after he had taken his seat in the Court of Chancery his attention had been directed to the obstables that existed in conducting the cultivation of estates in receivership from

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41. See Chapter 1.

42. Preamble to Law 17 of 1855 The Consignee's Lien Abolition Law.

the difficulty in finding funds for the purpose. "The person who filed the bill for receivership would not spend any money on the property. The party against whom it was filed never had the money. The Receiver ought not to, being an officer of the Court. In many cases the Receiver did so and his claim was not only a first charge on the estate but often exhausted it. Of these, 43 owed monies to Receivers, 13 were abandoned, a fate awaiting the above 43. Everyday's experience shows that absentee proprietors are becoming more disposed to leasing, as the only means of securing an income from their estates which when in their own hands are altogether unprofitable." [43].

The Vice-Chancellor's Counsel did not prevail, [44]. the Bill did not become an Act, and the issue was not raised again until eleven years later. In 1855 the Imperial Parliament enacted 17 and 18 V C 17, an Act to facilitate the sale and transfer of Incumbered Estates in the West Indies, the provisions of which made possible judicial sales of such lands, upon due enquiry into the nature and extent of the interests and charges thereon, the transfer of estates free from such incumbrances, and the

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43. CO 137/278 - 1844.

44. The Bill was opposed in Council by Chief Justice Rowe, Attorney General O'Rielly and T.J.Bernard, Chairman of Quarter Sessions. At CO 137/278 on 30/5/1844 Stanley to Elgin "after a careful consideration of the case it appears to me that there is so evident a balance of advantage in the proposed change of law that I think that if a similar Bill should again pass the Council and Assembly your assent to it ought not again to be refused."

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distribution of the proceeds among the lawful claimants thereto. The Act together with the subsequent amending Acts became applicable to a colony upon a petition of its Legislature to that effect.

Not until March 1861 [45.] did the Jamaica Legislature choose to take the necessary steps. Three months later under a local enactment 24 V C 4 "for carrying into execution in this island the West India Incumbered Estates Act 1854 - 8" a local Commission consisting of the Chief Justice and two Assistant Judges [46.] was set up and they collaborated with the Commissioners appointed under the English Acts in administering the law. Between 1861 and 1864 over 30 estates were disposed of. [47.]

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45. At CO 137/326 Barkly to Herbert 31/3/1855 the reasons for the delaywere given:- (i)The view was that the Government was anxious for the adoption of the measure in order to create a staff of local Commissioners, Assistant Secretaries, Clerks etc. as specified in Clause 12. (ii) The island Press had, when the Bill in question was introduced into the House of Lords, done all in its power to disparage it from motives not easily defined within the limits of a Dispatch but which may be conceived when it is borne in mind that by one large party any Act from the Mother Country - short of restoration of protective duties - is suspected and usually spurned ..... whilst to all Imperial Legislation on Colonial Questions, however framed, is on principle distasteful. (iii) Added to this, that this is a Community of Debtors protected in some sort in the possession of their estates by the well-known tediousness and expensiveness of litigation and that the Legal Profession is numerously represented both in the Council and Assembly , and it will not appear surprising that no disposition should have been exhibited to apply for an Order in Council to bring the Act into operation."

46. Sir Bryan Edwards, Hon.Jasper Farmer Cargill and Hon.Alan Ker.

47. See Douglas Hall Op Cit p.116.

In 1868 it was proposed that the Imperial Acts which were due to expire in the following August should not be renewed unless the West India Colonies were prepared jointly to defray the charges for maintenance of the Imperial Commission. By then, however, circumstances in Jamaica had undergone radical changes. Sugar plantations supported only one in twelve or fifteen of the population, a situation which rendered any disbursement of Jamaica funds for such a project indefensible.[48] In addition it was considered that in the local Supreme Court "Jamaica had the means of doing, and of doing properly the work within itself without any expense to the colony."[49]

In 1873, therefore, a Law to facilitate the sale and transfer of Incumbered Estates was passed and came into operation on the first of September of that year. By it the Incumbered Estates

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48. View of the Governor Sir John Peter Grant CO 137/437/283 Grant to Buckingham and Chandos 7/12/1868. "The lands are not in England but in Jamaica and interests in these lands, dependent not upon the laws of England but the laws of Jamaica which require support in order with certainty to affect the realty by deeds registered not in Middlesex but in St.Jago de la Vega in accordance with Local Statutes. The distance of the London Commissioners, however able and the fact that they have to work in conjunction with the Local Commissioners make it impossible for them to work satisfacorily."

49. CO 137/437/283 Grant to Buckingham and Chandos 7/12/1868.

Court, a Court of Record with its own seal, was created and was constituted of the Chief Justice of the Supreme Court sitting alone. [50] Section 10 conferred upon the Court "all the powers, jurisdiction and authority of the Court of Chancery and particularly the Court shall have all the powers, authority and jurisdiction of the Court of Chancery for the investigation of title and for ascertaining and allowing incumbrances and charges and the amounts due thereon and for settling the priority of suchcharges and incumbrances respectively, and the rights of owners and others, and generally for ascertaining, declaring and allowing the rights of all persons in any land in respect of which application may be made under this Law, or in the money to arise from sales under this Law; and shall have the like authority and jurisdiction for enforcing rescinding or varying any contract for sale made under this Law, as are vested in the Court of Chancery in relation to a sale under the direction of such Court."

Section 13 conferred the power of sale to which Section 10 referred and which was indispensable to the liberation of the land from the stranglehold of annuitants, creditors and defective titles. Uponapplication made to it either by an owner of land subject to incumbrances or by any incumbrancer the Court

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50. S 4 of Law 18 of 1873.

could sell the land or such part of it, as it saw fit, and grant title to the purchaser free from all former and other estates, rights, charges and incumbrances, except rights of common, rights of way, easement and other like incorporeal hereditaments.

Apart from the power to send questions offact to be tried by a jury in any Circuit Court and to give all necessary orders and directions for such trial, the Court exercised a number of other powers. Thus it could appoint receivers, order investment of purchase money, redeem charges, order exchanges and partitions, and for the due performance of all such duties as were necessary to be performed for the carrying out of the objects of the Law the Registrar and other Officers of the Court of Chancery was made part of the Official staff of the Court. [51.]

(iv) The Court for Divorce and Matrimonial Causes.

We have seen that in testamentary and administration matters the Governor exercised jurisdiction as Ordinary by virtue of the Royal Commission. [52.] In matters matrimonial however there was no authority competent to decree divorce or to grant

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51. Sec.47 of Law 17 of 1873.

52. See Chapter 4.

an order for judicial separation.

This disability first drew official notice in the colony in 1739. In that year Elizabeth, wife of Edward Manning, the wealthy Jamaica merchant, and creditor of many Governors, was accused of adultery with one of her negro slaves and with Ballard Beckford, member of Assembly, with whose wife Mr. Manning had been alleged to have been in adulterous relations. The implications in a slave society of the first accusation were sufficiently grave to prompt the House to set up a Committee of Enquiry which, after having interrogated several witnesses, reported that (a) a crime had been publicly and avowedly committed against the very source and foundation of society, (b) Ballard Beckford, the correspondent be expelled the House and (c) Mr. Manning be permitted to introduce a Private Bill to dissolve the marriage." 53.

In due course the Manning's Divorce Act reached an astonished Board of Trade. Their representations in favour of its disallowance recited that "they have considered the Act and have heard Counsel as well in support of as against the said

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53. CO 140/23/479 Jamaica Courant 4/4/1739 "Whereas Elizabeth, the wife of Edward Manning of Kingston Esquire has lately eloped from her said husband, this is to caution all persons against giving her any credit for either money or goods."
Sgd. Edward Manning.

Act and .... that this is the first instance of an Act of Divorce that has ever passed in any of His Majesty's Colonies in America on which account the said Lord Commissioners thought it incumbent upon them to examine very particularly if in carrying this power into execution the Legislature of Jamaica had conformed itself to the usual practice commonly observed in passing Acts of this nature by the Legislature of Great Britain; but upon hearing Counsel on both sides and enquiring into the steps taken by Mr. Manning, the said Lord Commissioners did not find that there was any action commenced or any verdict obtained at Common Law for him previous to the passing of the Bill in Jamaica, a step which has generally preceded all Bills of this nature in England, [54.] neither did they find upon reading the affidavits that were taken upon the occasion before the Council and Assembly of Jamaica that the fact of the adultery was positively proved by any evidence though from many indiscreet and indecent familiarities which were plainly sworn to there are strong presumptions of it for

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54. It was not that Mr. Manning was ignorant of the necessity of this preliminary step. It is suggested that not even Mr. Manning could have hoped for a favourable verdict from a Jamaican Jury in the circumstances. On the contrary "Judgment was given in the Cause of Ballard Beckford v. Edward Manning in May Grand Court 1739 on an action of trespass for a criminal conversation with the Plaintiff's wife in which he had damages for £1200. Writ of error was brought July 1740 and the parties were at issue the 14th October following," but as the members of the Grand Court were also Members of the Council hearing of the appeal was indefinitely delayed. See CO 1/23 p.610.

which reasons the said Lord Commissioners proposed that the said Act should be repealed." [55].

With this recommendation of the Board the Committee of the Privy Council agreed and in signifying their concurrence to the full Council emphasized that "Acts of this nature were not only unprecedented in the Plantation, but were also liable to be attended with many and great inconveniencys should they be allowed and that a Suspending Clause ought indispensably to have been inserted in this Act in order to have prevented the many ill consequences that might have attended the carrying the same into execution before His Majesty's Pleasure was known thereupon. [56].

Nothing more was heard of this particular matter, nor does it appear that the want of this jurisdiction in divorce pressed itself upon a white society whose licentious unions with their slaves were regarded merely as the exercise of rights incidental to the proprietary ownership of human beings. [57].

In 1827 it was reported to the Commissioners of Legal Enquiry in Jamaica that "there was no jurisdiction in this country

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55. A P C III pp. 681 - 3 NO 502
56. A P C III pp. 681 - 3 NO 502
57. See Chapter 2.

competent to pronounce a sentence of divorce, either a vinculo matrimonii or a mensa et thoro between parties married in this colony or elsewhere, [58]. but in Barbados as in Jamaica, the Commissioners were informed that the Court of Chancery had jurisdiction to award separate maintenance to a wife on proof of misconduct by her husband. This jurisdiction had been exercised in England during the Commonwealth by the Court of Chancery when the spiritual courts were in abeyance but had ceased on Restoration. [59]. In the colonies however it had persisted however questionable in strict law, and the Commissioners indeed considered that "this encroachment" if it be so was none the less "a necessary and useful jurisdiction" [60].

Within a year of the enactment in England of the Matrimonial Causes Act 1857 the Colonial Secretary raised with Colonial Governors the question of the adoption of the Act in the colonies and from Darling a reply was received that "The Committee (i.e. the Executive Committee) are unanimously of opinion, in which I concur with them, that the marriage tie is already so lightly held amongst the body of the population of Jamaica that it would be very inexpedient even to bring a question which embraces the dissolution of marriage before the

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58. Commissioners of Legal Enquiry Op.Cit. p.185. This report also suggested that such a jurisdiction might be transferred to a Chancellor.

59. Ball v. Montgomery 2 Vern. 493.

60. Commissioners of Legal Enquiry Op.Cit. p. 23.

Legislature and thus probably under it a prominent subject of public discussion." [61].

Thirteen years later in answer to another Circular Dispatch accompanied by a memorandum on the subject of "marriage and divorce among negroes" Sir John Peter Grant replied that "we have been considering the subject re all classes of persons. Different marriage and divorce laws for different classes of Her Majesty's subjects, all being Christians, are out of the question here. Divorce here is impossible. No Court has the power. Not even the legislative remedy available to rich people in England formerly exist here. The situation is grievous to the negroes. The English Law on Divorce would do good here." [62].

Finally in February 1879 Law 14 of 1879, the Divorce Law was enacted, and came into effect on the day before the Judicature Law was put into operation, namely, the 31st December 1879. Under its provisions the Supreme Court became the Court for Divorce and Matrimonial Causes with power "to have and exercise as such in this island, and subject to the provisions of this Law, jurisdiction and power to pronounce and enforce decrees of dissolution of marriage, judicial separation,

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61. CO 137/340 Darling to Lytton 24/12/1858.
62. CO 137/458 (Confidential) Grant to Kimberley 22/8/1871.

nullity of marriage and such other jurisdiction in relation thereto or subsidiary thereto as is by this Law conferred and including jurisdiction to make and enforce decrees and orders for the reversal of decrees of judicial separation, for damages against an adulterer and for the proper application of the same, for the making pecuniary provisions in certain cases for wives being parties to suits in the Court, and for settlement of property of parties to suits in the Court and for the custody and maintenance of the children of parties to suits in the Court."[63]

In addition to its own powers as such the Supreme Court had conferred upon it all the powers of the Court of Chancery to enable it to exercise the jurisdiction conferred upon it by the Divorce Law and to enforce its orders and decrees, and it was expressly provided that in suits and proceedings for nullity of marriage and judicial separation, the Court should act and give relief "in accordance with the principles and rules which, in the opinion of the Court, shall be as nearly as may be

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63. Section 3. Grounds for a decree of nullity of marriage were (a) one of the parties having a husband or wife living at the time of the marriage, (b) parties within the prohibited degrees of consanguinity or affinity, (c) want of consent by reason of duress, fraud, incapacity of mind, (d) incapacity of one of the parties. S. 8. Grounds for a decree of judicial separation were (a) adultery, (b) Cruelty, (c) desertion without cause for two years or upwards. S.9. Grounds for dissolution of a marriage (i) on petition of a wife were (a) incestuous adultery, (b) bigamy with adultery, (c) rape, (d) Sodomy, (e) bestiality, (f) adultery coupled with cruelty and desertion. (ii) On petition of a husband (a) adultery. S.14.

conformable to the Principles and Rules in which the Ecclesiastical Courts in England acted and gave relief before the passing of the Imperial Act 20 and 21 V C 85, but subject to the provisions of this Law."

Section 26 formally removed a common law relic which had had no real active existence in Jamaica. It decreed that "after the commencement of this Law no action shall be maintainable in Jamaica for criminal conversation."

(v) The Court of Vice-Admiralty.

In the account of the Vice-Admiralty Court in Jamaica its evolution had been traced down to the early 19th century. [64.] With the subsequent progressive dissolution of the old Colonial System, ending with the repeal in 1849 of the Navigation Laws, the role of this Court in the life of the colony naturally declined.

An Imperial Court, it was nevertheless the object of a certain amount of statutory development and rationalisation in the later 19th century, the outlines of which will now be traced.

For some time the exact limits of the jurisdiction of the Court, especially with respect to its powers to hear and determine droits of Admiralty, had engendered doubts. ~~These~~

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64. See Chapter 4.

These matters became in 1832 the subject of legislative definition. Section 6 of the Imperial Act 2 W 4 C 51[65] expressly conferred upon the Court a jurisdiction in suits for seamen's wages, pilotage, bottomry, damage to ships by collision, contempt or breach of the Regulations and Instructions relating to His Majesty's Service at Sea, salvage and droits of Admiralty. The same Act also gave power to the Privy Council to make rules and regulations defining the duties of the Officers of the Court and establishing tables of fees for regulating the remunerations of the judges, officers and practitioners of the Court.[66]

By the Vice-Admiralty Act of 1863 the term "Vice-Admiralty Court" was more precisely defined,[67] its jurisdiction extended, and the manner of appointment of its judges and officers placed upon a more practicable basis.[68] Upon a vacancy arising in the office of Judge of the Court, the Act provided that the Chief Justice should by virtue of his office as such be the Judge of the Court and by Section 22 all appeals from the Court

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65. An Act to regulate the Practice and Fees in the Vice-Admiralty Courts abroad and to obviate doubts as to their jurisdiction.

66. Section 1.

67. Section 2. "Vice-Admiralty Court shall mean any of the existing Vice-Admiralty Courts enumerated in the Schedule marked "A" or any Vice-Admiralty Courts hereafter established in any British Possession" Jamaica was listed in the Schedule .

68. S.S. 3 and 5.

were to proceed to Her Majesty in Council. Four years later an amending Statute [69.] authorised the Judge of the Vice-Admiralty Court with the approval in writing of the Governor to appoint one or more deputy Judges to assist or represent him in the execution of the judicial powers of his office,[70.] and persons entitled to practice as advocates, barristers-at-law, attorneys-at-law, or solicitors in the Supreme Courts of Law and Equity were empowered to practice in the same capacities in the Vice-Admiralty Court.[71.]

For purposes of completeness mention may here be made of the Colonial Courts of Admiralty Act 1890. This Act was in many respects a revolutionary measure. By it the Vice-Admiralty Court was abolished, [72.] the functions of the Chief Justice as ex-officio Judge of the Court and of his deputy or deputies were terminated, and in their places was established a Colonial Court of Admiralty constituted of the Supreme Court in virtue of its powers as a court of original

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69. 30 and 31 V C 45 The Vice-Admiralty Courts Act Amendment Act 1867.

70. Section 5 See CO 137/534/35 Norman to Holland "Chief Justice Ellis has appointed Mr. Justice Curran, Deputy Judge of the Vice-Admiralty Court, vide Section 5 of Imperial 30 and 31 V C 45" There was a suit pending before the Court and as Chief Justice Ellis was ill he availed himself of his statutory powers.

71. S.15.

72. S.17.

unlimited jurisdiction.[73]

From Section 2 of the Act the jurisdiction of the Court was derived. It was expressed, subject to the Act, to lie "over the like places, persons, matters and things as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise" and the Colonial Court of Admiralty was empowered to exercise such jurisdiction in like manner and to as full extent as the High Court in England, and to have the same regard as that Court to international law and the comity of nations.[74] Further, the colonial legislature was given a power, subject to restrictions, to confer jurisdiction in Admiralty either upon any Court of unlimited jurisdiction, whether original or appellate within the colony, or upon any inferior or subordinate Court,[75] and provisions were made for the hearing

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73. S. 2. "Unlimited Jurisdiction" was defined (S.15) to mean "civil jurisdiction unlimited as to the value of the subject matter at issue, or as to the amount that may be claimed or recovered."

74. As the Court derives its jurisdiction from this Act, any extension of the Admiralty jurisdiction of the High Court in England (e.g. The Supreme Court of Judicature(Consolidation)Act 1925, S 22(1)(a)(IX) after 1890 does not apply. Thus the Supreme Court of Jamaica has no jurisdiction in rem to try claims in respect of mortgages. The Yuri Maru. The Woron(1927) A.C.906 also De-Osca v.The Lady D(1962) 3 W.I.R. 515.

75. The Jamaica Independence Act 1962 has removed the dependence of the Jamaica Legislature in law-making under this Act, but the Supreme Court still derives its jurisdiction from the 1890 Act.

of appeals from the Colonial Court of Admiralty by the Privy Council.

By Proviso (b) to Section 2 of the Colonial Courts of Admiralty Act, the Supreme Court as a Colonial Court of Admiralty also enjoyed a prize jurisdiction founded upon the warrant of the Lords Commissioner of the Admiralty issued pursuant to the Act. The jurisdiction of the Court as a Court of Prize was defined by the warrant and was exerciseable upon a proclamation of the outbreak of war.[76] From the Supreme Court in exercise of its prize jurisdiction an appeal lay to the Privy Council.

(vi) The Court of Admiralty Sessions.

We have seen that under the Imperial Act 46 G 3 C 54 (1806) A Court of Admiralty Sessions existed in the colony, constituted of the judge of the Vice-Admiralty Court as President and two or more other persons appointed by the Governor by virtue of letters patent from the Crown issued under power in that behalf contained in the Act.[77] The jurisdiction of this Court, its mode of trial and its general powers and procedures have also been noted. In the latter half of the 19th century the progressive tendency of the

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76. See also The Naval Prize Act (1864) and the Prize Courts Act of 1894 under which a Warrant dated 17/8/1899 was issued constituting the Supreme Court a Prize Court in the event of war. CO 137/561/264. Swettenham to Elgin 1/6/1906.

77. See Chapter 4.

Imperial Parliament inclined towards the investment of the colonial courts with increasing jurisdiction over crimes committed on or connected with the high seas.

The first important measure was the Admiralty Offences (Colonial) Act of 1849. (12 - 13 V C 96). That Act gave to the ordinary colonial courts of common law jurisdiction to hear and determine any treason, piracy, felony, robbery, murder, conspiracy or other offence whatsoever committed upon the sea or in any haven, river, creek or place within the jurisdiction of the Admiral by any person within the colony or brought for trial to the colony. [78] Such proceedings, it was provided, were to be instituted and conducted as "if such offence had been committed, and such person had been charged with having committed the same upon waters situate within the limits of any such colony and within the limits of the local jurisdiction of the courts of criminal justice of such colony." [79] By Section 3 it was further provided that "where any person shall <u>die in any colony</u> of any stroke, poisoning, or hurt; such person having been feloniously stricken, poisoned or <u>hurt upon the sea</u>, or in any haven, river, creek or place where the Admiral or Admirals have power,

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78. S. 1.

79. S. 1.

authority or jurisdiction, or at any place out of such colony, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter may be dealt with, enquired of, tried, determined and punished in such colony in the same manner and in all respects as if such offence had been wholly committed in that colony...."

Until 1860 no colonial court had jurisdiction to adjudicate upon acts committed within a colony resulting in death upon the sea. To fill this gap in respect of which specific provisions had been made in England by municipal Law,[80] the Imperial Admiralty Offences (Colonial Act) 1860 [81] made it lawful for the legislature of any of Her Majesty's possessions to enact legislation whereby any offence committed in respect of any such case whether murder, manslaughter, or accessory before the fact or after may be dealt with in the colony where the act resulting in the death occurred.

Purporting to act pursuant to powers in that behalf under the Imperial Act the Jamaica Legislature in 1864 passed three Acts, namely 27 V C 32, an Act relating to offences against the person, 27 V C 33, an Act relating to larceny and Act 28 V C 34,

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80. 9 G 4 C 31 an Act for consolidating and amending the Statutes in England relating to offences against the person.

81. 23 and 24 V C 122 (1860)

an Act relating to Malicious Injuries to Property, sections 57, 97, and 60 of which respectively conferred upon the appropriate local courts jurisdiction to deal with, enquire of, try and determine "all indictable offences mentioned in the separate Acts which shall be committed within the jurisdiction of the Vice-Admiral of this island .... as if they had been committed upon the land in this island." [82.]

Finally in 1894 the Merchant Shipping Act was enacted by the Imperial Parliament, section 686 of which considerably extended the jurisdictional powers of Colonial Admiralty Courts over offences committed on the high seas: "(i) Where any person, being a British subject, is charged withhaving committed any offence on board any British ship on the high seas or in any foreign port or harbour or on board any foreign ship to which he does not belong, or not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any Court in Her Majesty's dominions, which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction,

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82. See Appendix B.

that Court shall have jurisdiction to try the offence as if it had been so committed.

(ii) Nothing in this section shall affect the Admiralty Offences (Colonial) Act 1849."

CHAPTER XVI.

THE SUPREME COURT OF JUDICATURE OF JAMAICA. 1879.

At the time of the enactment in May 1879 of the Judicature Law business in the superior courts of the island was dispatched in no less than eight separate, independent, and co-ordinate courts, namely, The Supreme Court of Judicature, the High Court of Chancery, the Court of Ordinary, the Vice-Admiralty Court, the Circuit Court, the Chief Court of Bankruptcy, the Incumbered Estates' Court and the Court for Divorce and Matrimonial Causes.

It had been the object of the Governor since 1869 to consolidate the Superior Courts of the country inasmuch as "the eventual fusion into one system of law of all the English systems of law would be a trifling and easy task here where the same men are already judges, advocates and practitioners in all the courts." [1].

That object had been advanced during the succeeding years, as we have seen, by the reforms in the organisation of, and in the conduct of business in, the courts of law and equity,

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1. CO 137/443 Grant to Granville 24/8/1869.

tending to bring the two systems closer together and so to pave the way for setting up a single court in which both law and equity should be concurrently administered. Law 24 of 1879, the Judicature Law, accomplished the final act of consolidation.

With effect from the first of January 1880 [2.] seven of these Courts, the Supreme Court of Judicature, the High Court of Chancery, the Incumbered Estates' Court, the Court of Ordinary, the Court for Divorce and Matrimonial Causes, the Chief Court of Bankruptcy and the Circuit Court were by operation of Law all consolidated and together constituted one Supreme Court of Judicature in Jamaica under the style "The Supreme Court of Judicature of Jamaica". The eight court, the Court of Vice-Admiralty, being founded, as we have seen, upon Imperial Statutes, was outside the legislative competence of the colonial Legislature to incorporate in the consolidating measure. [3.]

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2. Section 1 had provided for the major part of the Law to come into operation by proclamation.

3. CO 137/490/163 Musgrave to Hick-Beach 2/6/1879 (Forwarding Report of the Attorney General O'Malley upon Law 24 of 1879) "Consolidation of the Superior Courts is provided for by Section 5. The Section deals with all the Courts except the Court of Vice-Admiralty, the status and jurisdiction of which are determined by Imperial Statutes".

The newly consolidated Court was a Court of Record and for the first time in its history a Supreme Court of Jamaica possessed its own seal. [4.] The complement of the Court was increased to three, the Chief Justice and two Puisne Judges, and it was expressed to have and exercise in the colony all the jurisdiction power and authority which at the commencement of the Law were vested not only in the Courts as such, of which it was constituted, but of the judges thereof, of the Governor as Chancellor or Ordinary acting in any judicial capacity and all ministerial powers, duties and authorities incident to any part of such jurisdiction power and authority. [5.]

Like the earlier Supreme Court, the consolidated Court exercised both a jurisdiction at first instance and an appellate jurisdiction. In the former capacity, its sittings were normally to be held in Kingston, whither its predecessor had been transferred in 1871, [6.] but subject to the provisions of the Law, particularly those relating to the holding of Circuit Courts and to Rules of Court, the Court and the judges thereof could sit and act at any time, and at

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4. See Chapter 14. Footnote 26.
5. Section 20.
6. Law 2 of 1871.

any place for the transaction of any part of the business of the Court or of such judges. With respect to the holding of Circuit Courts, the old arrangement under Law 2 of 1870 came to an end,[7] and the Governor in Privy Council was empowered to make rules appointing the time and places for holding the courts and arranging the circuits, the numbers thereof and directing what parishes and towns would be upon each circuit. The rules were to provide for the holding of circuits for the trial of persons committed for trial before a Circuit Court within four months[8] of such committal, and for determining of appeals from Courts of Summary Jurisdiction within four months of the notice of appeal being given, and it was particularly provided that the Governor in Privy Council could order that the whole island be constituted into one circuit.

As a Court exercising original Common Law and Equity jurisdiction it was provided that (a) where the cause of action arose wholly or in part within the Kingston Circuit, the trial should ordinarily take place at the sittings of the Kingston

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7. See Chapter 14.

8. The Draft Law had prescribed a period of two months which was extended to four on the recommendation of the Crown CO 137/490/161 Musgrave to Hick-Beach 2/6/1879 (Conveying A.G. O'Malley's Report on the Law)

Circuit (b) where the cause of action arose within any other Circuit, the trial should take place at the sittings of the Kingston Circuit or at the Circuit Court of the Circuit in which the cause of action arose, at the option of the plaintiff, but in any case, upon reasonable cause being shown, the court or judge could order any suit to be tried at the Kingston Circuit Court or at any convenient Circuit Court. In all other proceedings before the Supreme Court in exercise of its civil jurisdiction the trials were so far as was reasonably practicable to take place in Kingston. [9.]

The periodic sittings of the Supreme Court which dated back to its earliest establishment gave place to continuous sittings throughout the year, subject to vacations, and a single judge in Court or in Chambers was empowered to exercise any part of the jurisdiction of the Court which before the passing of the Law might have been so exercised or which might be directed or authorised to be so exercised by Rules of Court made under the Law. When sitting in exercise of the civil jurisdiction of the Court elsewhere than in a Full Court, a judge of the Supreme Court could reserve any case or any point in a case for the consideration

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9. Section 26.

of the Full Court, or could direct any case or point in a case to be argued before the Full Court, but this power was not to interfere with the rights of parties to have the issues for trial by jury submitted and left for their determination.[10.]

In its capacity as a Court of Appeal it was provided that the Full Court of the Supreme Court should be constituted of all three judges of the Court except when (through pressure of business or any other cause) it may not be conveniently found practicable, in which case the Full Court could be composed of any two judges of the Court. In the latter event and if the two judges differed as to the judgment that should be given, the cause or matter was to be re-heard as soon as possible by a full Court of three judges.

All motions for new trial of causes or matters upon which a verdict had been found with or without a jury, all motions in arrest of judgment or to enter judgment non obstante veredicto or to enter a verdict for plaintiff or defendant or to enter a non-suit or to reduce damages and special cases and special verdicts were to be heard before the Full Court. In addition an appeal lay to the Full Court from all judgments or decisions of a single judge of the Supreme Court sitting as a Court of first instance in civil proceedings, and from all interlocutory proceedings , excepting consent orders and

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10. Section 30.

orders as to costs except by leave of the Judge.[11.] The Full Court was also the final court of appeal from all District Courts and heard criminal appeals from the Circuit courts and all appeals in criminal matters to the Full Court were to be regulated by the existing Laws regulating Criminal Procedure.[12.]

Contemporaneous with the enactment of the Judicature Law was the Civil Procedure Codes Law 39 of 1879, "an adaptation to the circumstances of this island of the Code of Civil Procedure of the Leeward Islands which is itself founded mainly on the Rules of Court drawn up under the English Judicature Acts." [13.] The Code provided a complete system of procedure at Common Law and in Equity for the Supreme Court. Together with such rules of procedure and practice provided by the Judicature Law, and the Laws regulating Criminal Procedure and such Rules and Orders as the Court was empowered to make they constituted the corpus of the practice and procedures of the Court, although it was provided that "Where no special provisions was contained in any of the

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11. S S 31 and 32.

12. S S 31 and 32.

13. CO 137/491/262 Lt. GovNewton to Hick-Beach 22/8/1879 (Conveying Attorney General O'Malley's Report on the Code)

above-mentioned sources, jurisdiction was to be exercised as nearly as may be in the same manner as it might have been exercised by the respective Court from which it is transferred or by the Court or judges or by the Governor or Chancellor or Ordinary."[14].

The Judicature Law, it should be noted, consolidated the judicial institutions, but it did not fuse the systems of law and equity which were to be concurrently administered by the Supreme Court "a Court not of law, nor of equity, but of complete jurisdiction"[15]. To this end sections 38 and 39 of the Judicature Law laid down the principles upon which law and equity were to be concurrently administered "and were substantially a transcript of the English provisions of the Judicature Act of 1873 Section 24 and Section 10 of the Judicature Act of 1875,"[16]. the latter section ending with the well-known provision "Generally in all matters not hereinbefore particularly mentioned in which there is any conflict or variance between the rules of Equity and the rules of Common Law with reference to the same matter, the rules of equity shall prevail."

Section 40 of the Law re-introduced a practice for

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14. S.21.

15. Lord Cairns. See Radcliffe and Cross: The English Legal System (1946) p.301.

16. CO 137/490/163 Musgrave to Hick-Beach 2/6/1879 (Conveying Attorney General O'Malley's Report on the Judicature Law)

which provision had existed under Section 8 of Law 35 of 1867, the District Courts Law, but which had come to an end in 1870 when Mr.Justice Cargill resumed his seat in the Supreme Court.[17] By it the civil business of the District Court of the district for the time being in which the City of Kingston was situated was to be discharged by one or other of the Puisne Judges of the Supreme Court who, for the purpose, had and exercised the powers and authorities of a District Court Judge. Like the Supreme Court and the District Court, the City of Kingston Court, as it was called, had a seal and all process of the Court in relation to civil proceedings was entitled as of the Court by such name.

The Judges. It has already been noticed that the Supreme Court as consolidated was constituted of the Chief Justice and two Puisne Judges. The latter's rank depended on the dates of their appointment and like the Chief Justice, they were required to be members of the Bar of England, Ireland or Scotland of at least five years' standing. They held their appointment by Letters Patent under the Public Seal of the island issued by the Governor in pursuance of a

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17. Upon the reduction of the number of District Courts from 8 to 7 in 1870 the district of the Kingston District Court had been enlarged and Mr.Justice Cargill requested to return to the Supreme Court and Grant had yielded "in order to avoid contest on an unseemly subject" CO 137/459/179 Grant to Kimberley 9/12/1871. Cargill died 27/11/1871.

warrant under Her Majesty's Signet and Sign Manual or of instructions received through one of Her Majesty's Principal Secretaries of State.

Judicial appointments continued to be durante bene-placito regis. The Judicial Amendment Act 1855, however, was repealed and with that repeal the judges lost the protection of the "Colonial Charter of Justice" [18] contained in Section 5 which had rendered their removal from office impossible "otherwise than according to the provisions of two several Acts of the legislature of this island, that is to say, the 21st G.3 C.25 (1781) and 57th G.3 C.17 (1816) nor shall they be suspended from the exercise of their offices by the Governor, except by and with the Advice and consent of a majority of the members of a board of Privy Council." Alternative provisions were made by Section 7 (a) of the Judicature Law which enacted that "the Judges of the Supreme Court shall not be removed from office except in accordance with Her Majesty's pleasure signified under Her Sign Manual : Provided that the Governor may, with the advice of the Privy Council, for good cause suspend any such judge from executing his office until Her Majesty's pleasure is known." [19]

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18. See Appendix C.

19. S. 7(a)

The salary of the Chief Justice, it was provided, should not exceed £2500 per annum, nor that of the Puisne Judges £1500 per annum, and they were expressed to be payable out of General Revenue, and in order to ensure the security and independence of the Judiciary it was expressly provided that "the Chief Justice and the Puisne Judge of the Supreme Court of Judicature at the time of the commencement of this Law 'shall not be prejudicially affected as to the tenure of office, rank, travelling allowance, pension or any other rights, privileges or immunities; and, subject to the change effected in their jurisdiction by or in pursuance of this Law, each of them shall be capable of performing and liable to perform all duties which he would have been capable or liable to perform in pursuance of any law or custom if this Law had not been passed.[20.] Further, as it had been provided that the Puisne Judges of the Supreme Court should exercise the jurisdiction and perform the judicial duties of the City of Kingston Court, it was particularly provided that "the Puisne Judge of the Supreme Court of Judicature at the time of the commencement of this Law shall not be required to perform the duties of a Judge of the City of Kingston Court under

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20. S.48.

Section 40 of this Law, but shall be elegible for such duties if he chooses to perform them." [21].

Official Staff. Provisions were made for the appointment of a sufficient number of Circuit Court Clerks, for a Bailiff of the Supreme Court and for Court Criers, whilst the words "and clerk of the Court and Crown" were dropped from the description of the Registrar. [22].

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21. S. 48.

22. S. 9.

CHAPTER XVII

The Judicature in operation. 1867 - 1887

The plan of legal reform which began with the District Court Laws of 1867 attained full development twelve years later with the enactment of the Judicature and Civil Procedure Code Laws of 1879.

Throughout its existence this new legal system was the object of mixed reception. To some, including respected legal opinion in the country, it was, despite acknowledged remediable defects, "an inestimable boon to the community," [1] Among others, mainly Jews, half-ruined planters and some designing politicians and solicitors whose agitation for change partly prevailed, "its beneficial character was denied in toto." [2]

Inasmuch as the prevailing legal system today is substantially the product of those agitations, the operation of the new Judicature and the circumstances of its re-organisation command attention.

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1. CO137/51/384 Norman to Derby 16/9/1884 (Conveying opinion of Mr.Justice Ker).
2. Ibid.

(A) The operation of the Judicature

(1) The District Courts.

From the outset the District Courts by reason of the scope of their jurisdiction were destined to play a central role in administration. In 1868 when only five of these courts were in operation, and of the five, only three were in operation for the whole year, the business they attracted was voluminous. "All five have done a considerable business of a legitimate character, none of which or a very minute portion of which would have been brought to trial at all but for the existence of these courts."[3] 2,091 common law cases, 10 equity cases, 86 land cases and 348 criminal cases were disposed of up to the end of 1868, and together with the sum of £16,393, representing suitors' money claimed, they indicated the number of persons who must have nurtured unredressed grievances in the pre-rebellion era.

The same service to the cause of social peace and harmony is indicated in the tables[4] below for the years 1869-1871, with particular reference to the utility of the courts in respect of their probate, equity and land jurisdiction, species of service not hitherto afforded in any former intermediate judicial system :-

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3. CO137/444/264 Grant to Granville 8/11/1869.
4. CO137/463/66 Grant to Kimberley 8/4/1872.

Nature of Cases	1869	1870	1870/1
Criminal Cases	1,256	1,712	1,831
Small Causes	3,133	5,509	7,321
Equity	2	10	13
Land	133	137	353
Insolvency	9	147	42
Probate	35	43	42
Amounts claimed	£22,919	£29,070	£35,958
Criminal Appeals	1869 to 1870/1		25
Civil Appeals	do		6
Confirmed			18
Reversed			13

The benefits of the Courts extended beyond the mere quantum of business they despatched. In solving the thorny problem of squatting these courts, administering sound and just laws, demonstrated their utility as instruments for social stability and economic progress.

The temptation to get land without paying any rent for it had induced men to separate themselves from civilization; whilst the uncertainty of possession belonging to the position of a squatter was inconsistent with all steady habits of industry and with all improvement in agriculture.[5] Between 1869 and 1870, however, 12,000 acres of land were surveyed, and of this acreage, the District Courts under their land jurisdiction placed in the vicarious custody of the Crown a considerable portion which under provisions of the same law were parcelled out to former illegal occupants in enjoyment of secure statutory leases. "The result was that squatters were not ill-satisfied to get a good lease for a fair rent in exchange for their previously precarious possession" and "in no very long time", the Governor continued, "the greatest social and political evil we have had to deal with in this colony will be greatly eradicated."[6] The riots and tumults and apprehended riots and tumults from emancipation downwards which owed their origin to land disputes ceased and as a single instance of the benefits conferred by these courts Mr. Justice Ker instanced "the total

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5. CO137/457/103 Grant to Kimberley 4/8/1871.
6. Ibid.

cessation of the misdemeanour of forcible entry and detainer and of prosecutions for it."[7]

General impartiality in their administrations was a marked feature of the District Courts. The long arm of the law reached out to pluck from the grasp of the big white squatter no less than from that of the small black squatter the fruits of their illegal encroachments and the unaccustomed spectacle "satisfied the black settlers that justice was really and practically administered."[8]

"In 1871-2 several very important actions in which the Crown was prosecutor for the ejectment of squatters holding with no colour of title were decided. Thirteen properties containing in all 6,119 acres were recovered. The whole of these cases were cases of persons who had taken possession of land without colour of right or title. All of them were not cases of black squatters who had taken possession of small parcels of land. One of the properties mentioned is a fine grazing farm containing 2,059 acres and the one squatter ejected in that case was a gentleman of large property in the country. Another of the properties mentioned consists of a run of land containing 135 acres,

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7. Jamaica Handbook 1881 p.201. "Previously indictments for this offence constituted a principal portion of the criminal business at each Grant Court, and the evil was decidedly on the increase. It was found to be a convenient method, until judicial disallowance of the expenses corrected the error, of trying, at the cost of the country, questions of title to land. This also is changed. A means having been legislatively provided for the settlement of land disputes in a direct and regular way, the criminal law is no longer invoked for merely civil disputes."
8. CO137/458/122 Grant to Kimberley 24/8/1871.

unquestionably Crown property, and the one squatter ejected was a gentleman[9] of property and one who had held very high office in the colony under the late Constitution. An appeal was made to the Supreme Court in the last-mentioned case against the order of the District Court giving possession to the Crown. The Supreme Court confirmed the Order and commented strongly on the conduct of the defendant who having himself no colour of title had executed what was intended to be a deed of trust conveying it away for the benefit of his son, which under the possessory laws of the colony, was expected to grow into a good title and so to oust both the Crown and several small squatters."[10]

From His Honour Mr. Bruce sitting in the Spanish Town District Court, the popular planter doctrine expounded in the context of the District Courts Land Jurisdiction Law to signify that "the law was made for the unmitigated black squatter only"[11] received its final and unsparing execration, and the eminent client on whose behalf the doctrine was advanced, unprecedented judicial censure. "The law under which I adjudicate was made to eradicate from our midst an evil rampant and subversive of the public peace and however hard it may appear to disturb pleasant and profitable possession held as a tenure of unlawful seisin it is my duty to obey the law, for the wisdom of the law is greater than

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9. Mr. Salmon Justice of the Peace St.Elizabeth and a Member of the Municipal and Road Boards St. Elizabeth. He was in 1866 President of the Legislative Council and President of the Privy Council and until 1869 Custos of St. Elizabeth.
10. Blue Book 1871-2. See also CO137/470.
11. CO137/471/102 Grant to Kimberley 9/6/1873 (Conveying Bruce' account of the case).

any man's wisdom, neither should I under the peculiar circumstances of this case be doing my duty to society if I failed to remark that the defendant Royes had been guilty of an unpardonable contumacy in venturing to dispute possession of the lands the moment after it was demanded of him in the name of the Crown. Royes is a member of the Honourable Legislative Council of this island, and Custos or lieutenant of the district of St. Ann, one of the largest and most densely populated precincts of the island. Standing without the shadow of a legal defence it was his bounden duty to have shown obedience to the law and example to the people at large and a graceful bending to the supreme authority vested in that body of which he has the honour to be a member."[12]

Joseph Moses Bravo, Justice of the Peace and a litigant at the Old Harbour District Court on the 4th of August 1873, listened with anger and astonishment as His Honour Mr. Bruce read in open court a letter beginning with the words "You are a white man like myself ... " by which Mr. Bravo had hoped to influence the decision of the court,[13] and one planter and an overseer who were mulcted in damages of £10 and costs for the malicious prosecution and false imprisonment of an innocent man understood that "the person wronged being of a humble class would now have no practical difficulty in obtaining ample redress by the legitimate

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12. CO137/470 enclosing Jamaica Despatch reporting the case of R.V. Royes Town District Court December 1872.
13. CO137/472/182 Grant to Kimberley 22/4/1873. Four days later Mr. Braro assaulted Mr. Bruce at the Kingston Railway Station and accused the Judge of being "an associate of mulattos."

method of an action of damages before an accessible and impartial Court of law close at hand."[14]

Judicial acuteness ferretted out and exposed a number of artifices by which the intelligent and influential imposed upon the ignorant and weak. A suspicious connection between larceny of produce, particularly of logwood and pimento, and the business of the merchants aroused the curiosity of Mr. Gibbon, District Court Judge, and thus laid bare a magisterial racket. "In one case of larceny of pimento from a small cultivator tried before me there was no doubt of the thief having sold the stolen pimento to a local buyer who was recommended for his licence by a local magistrate who was himself the employer of the buyer and the party who ultimately profited from the theft. The case against the buyer was so suspicious that had I had the power I should have cancelled his licence. So too in several cases of logwood stealing it has appeared that the stolen logwood was readily purchased at the local wharf belonging in almost every case to a magistrate."[15]

Landowners of St. Ann who preyed upon the ignorant and unsuspecting peasantry with whom they designingly entered into no written agreements for the sale of lands, by receiving moneys on account and then proceeding to actions in ejectment, inundated the Governor with petitions when District Court Judges ordered stay of execution of their judgments for

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14. CO137/459/173 Grant to Kimberley 1/12/1871.
15. CO137/51/384 Norman to Derby 16/9/1884.

possession "until it was certified to the Court that the purchase money was returned",[16] whilst local merchants, accustomed to suing for balance of accounts and relying upon the absence of defendants to secure judgments, were angered when, in the case of illiterate defendants, the Courts requested production of the books in proof of balances.[17]

Unable in the particular circumstances of the case to thwart the attempt to corrupt the fountain of justice, District Court Judge Gibbon did not hesitate however to expose the dishonest solicitor and the corrupt jury. "I held an inquest" he reported to the Governor "on G. Palache, brother of W.Palache Solicitor. Deceased committed suicide with strychnine but the jury, all creditors of the deceased, returned a verdict of misadventure instead of felo de se. One of the jurors was the agent of a Foreign Insurance Company in which the life of the deceased had been insured a few months before. The amount of the policy was received by Mr. W.Palache."[18]

No longer was the Judicature, as represented in the District Courts, liable to the reproach that it was an institution for the advantage of the rich and favoured classes only. The labourer recovered his wages in the District Courts, and the landlord his rent, whilst the procedures of the court suited the needs of a community struggling out of the circumstances of economic depression. "They settle disputes summarily,

16. CO137/51/384 Norman to Derby 16/9/1884.
17. CO137/51/384 Norman to Derby 16/9/1884.
18. CO137/518/469 Norman to Derby 8/11/1884.

speedily (at least such was the intention of the Legislature) and inexpensively. Formerly a debt of a few pounds or damages of trifling amount could only be recovered by action in the Supreme Court, with an Attorney in the country, an Attorney in Spanish Town, trial when human patience could stand it no longer, and judgment and execution when Providence might send them (which Providence very seldom did). Everything is now changed. The parties come to an issue at once. There is no pleading. The summons informs the defendant what he is sued about, and if he makes any mistake upon the point, it is his own fault. Plaints which under the old system would never have come into court at all, but festered as un-redressed grievances, are now tried all over the country by the score, and quite a new department of professional business has been called into existence."[19]

But if the District Courts were independent and impartial, they were not without their defects. The reduction of their number from eight to seven in 1869 so enlarged the areas of jurisdiction of each and so increased their work severally as to have risked efficiency on the altar of economy.[20] In 1876 the West India Committee laid accusations that "the District Courts have not brought speedier or less expensive trials. The Courts sat regularly. Suitors have to travel considerable distances to court and costs in actions under £10 are in excess of those under the

19. Handbook of Jamaica 1881 p.201.
20. The gravity of the evils complained of were perhaps enlarged upon at this time by the Committee to suit their own purposes.

old Petty Debt Act."[21] Eight years later when the Courts were already further reduced to five, the more trustworthy view of the Attorney General H.H.Hocking was that the District Courts were too few.[22]

With enlarged areas of jurisdiction and greater volume of work to cope with, the maintenance of efficiency in the District Court, and the avoidance of accumulation of arrears called upon qualities in the judges other than those of independence and impartiality. Not lacking in these latter qualities,it was a sad fact that the incumbents of the office of District Court Judge in the eighties of the nineteenth century were for the greater part deficient in assiduity. "That high sense of public duty which is so becoming in a judge, that disregard in its performance of their own personal comfort and convenience, cruelly tried at times by attendances at remote stations over the ruggedest of parochial roads, companion-less and in all weathers which is a sine qua non in the itinerant dispenser of justice in Jamaica, and of the noble functions they were appointed to perform, a just and dignified appreciation has not invariably characterised the body ... To get through their lists and by granting their applications for the delays and postponements which have caused such scandal, to get on quietly with the practitioners, have been too much their habit. When men of the stamp of Mr. Heming (Attorney General of Ceylon) Mr. Williams (now judge of Mauritius) Mr. Jackson, formerly Clerk

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21. Letter dated 2/12/1876.
22. CO137/518/384 Norman to Derby 16/9/1884.

of the Peace Manchester and last but not least the present able and experienced Police Magistrate of Kingston have had the working of the machine not only have no complaints ever been heard but the Courts here attained to something almost like popularity."[23]

Where there was judicial weakness in acceding with readiness to motions for adjournment and in pandering to "the dilatoriness which characterised the legal profession in Jamaica,"[24] a duty to make regular and detailed reports upon business done in their courts might have kept some judges in the path of rectitude, but no statutory duty of efficient supervision over the administration of justice in the inferior courts existed.

Some District Court Judges too, reminiscent of their predecessors the Chairmen of Quarter Sessions, were considered inferior to local professional gentlemen, whilst the temporary services as District Court Judges of Mr. Bicknell, the Stipendiary Magistrate for Kingston and of Mr. Oughton, both gentlemen of Jamaica who were acquainted with the negro character and mode of expression, had left a deep impression upon the community by reason of their painstaking diligence.[25]

An air of lordliness in one District Court Judge/designate who reminded Mr. Justice Kemble that "he held a higher legal rank in the

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23. CO137/51/384 Norman to Derby 16/9/1884 (Conveying news of Mr. Justice, Ker).
24. CO137/440/72 Grant to Kimberley 24/7/1873 (Conveying report of Mr. Justice Ker).
25. CO137/51/384 Norman to Derby 16/9/1884.

United Kingdom than himself as a Puisne Judge in Jamaica"[26] disqualified him for the office, whilst another, Mr. Kerr, exceeded the bounds of respect and propriety in his communications with the Chief Executive. The latter "considering it necessary in respect of cases involving the Constabulary which may arise hereafter" had taken it upon himself to warn the Judge of a judgment, said by the Attorney General to have been erroneous in law, delivered by him against a Constable. Repudiating the admonition "as an improper interference by the Executive with a judge in the exercise of his judicial duties" the judge, going beyond the necessities of a just defence of his independence, imputed that "the Governor may have written from malevolence intending to insult me."[27]

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26. CO137/431/26 Grant to Buckingham & Chandos 10/2/1866. CO137/433 Buckingham and Chandos to Grant 10/6/1868. "It is most important that a judge should command the confidence of the community over whom he has to preside but it is to be feared that Mr. Lowry has forfeited all hope of obtaining this confidence and under the circumstances I agree with you in thinking that his appointment would be inexpedient and would tend to defeat the object for which the Law creating the District Courts was passed."
27. CO137/504/25 Musgrave to Kimberley 21/1/1882. Kimberley to Musgrave 15/8/1882 "It is not the province of the Executive Government to control or interfere with the decisions of Courts of Justice and an expression of opinion of the Executive Government as to the soundness of a decision is open to objection as having the appearance of an attempt to exercise such control." Mr. Kerr's complaint is well founded though I regret to notice in his letter the same want of respect and propriety which has characterised so many of his letters."

In the last five years of the District Courts, personal unfitness for office weighed down the courts in discredit in the public eye. Mr. Baird "had the reputation of being a man of immoral and intemperate habits and addicted to gambling."[28] In 1882 he resisted arrest by a bailiff who sought to remove him from a vessel on which he left for "home." The writ was subsequently set aside as irregular but the Court observed "I am compelled to remark that it would have better become a person fitting a judicial position, if instead of seeking to set aside his creditors' remedy he paid the debt and apologised for the default. If judges thus set at nought the ordinary rules of civil conduct they must not be surprised to be told, as it is my duty to tell Mr. Baird, that they cannot retain the respect of the community."[29]

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28. CO137/489 Musgrave to Hick-Beach 6/2/1879. "I frankly acknowledge that I should be glad if he were not among the judges of the District Court which suffer much in public estimation from being presided over by men of doubtful character for it is remarkable how very soon anything discreditable in a man's previous history becomes known even in these distant dependencies."

29. CO137/509/117 Musgrave to Derby 2/4/1883 (Conveying the remarks from the bench of Mr. Justice Kerr). A creditor wrote to the Governor "when Her Majesty's judges flee from their jurisdiction and their creditors, the honour and dignity of the courts are and necessarily must be diminished and the justice which they are supposed to administer brought into disrepute and contempt. Mr. Baird is not the only official in this colony on the judicial staff whose impecunious position produced by extravagance and other causes are a bye-word but whilst the others have somehow continued to appease their creditors, Mr. Baird is the only one who has attempted and succeeded to evade them." Baird died 11/4/1883.

No-one questioned the industry or the impartiality of Mr. Ernst, and the fact that "his decisions were not often reversed on appeal"[30] bore testimony to his abilities in the law, but "he was involved in a scandal with a lady, told the Governor a falsehood and left the island at such short notice that his creditors were quite thrown off their guard and are still unpaid. He would not be asked at Government House and would not again be received at the lodgings he occupied."[30]

The circumstance of the resignation of Mr. Gibbon whose alertness of mind was instanced in such cases as that of the logwood stealing was one that brought scandal to the administration of justice. A conscientious and upright judge, he lacked tact and restraint. The sharp words which had passed between himself and Mr. Lewis "a light-skinned Solicitor" during the conduct of an inquest, were resumed by the judge as he encountered the Solicitor in the precincts of the court, whilst making his way to his carriage, whip in hand. Exchanges of "low-blackguard" and "skunk" preceded an extra-judicial flagellation of the solicitor by the judge with his horse-whip and although the Colonial Office deeply regretted that "the confirmation of the suspension of Mr. Gibbon would only have served to give the Lewises of Jamaica a sense of triumph,"[31] they were constrained to ask for his resignation in the spring of 1885.

The supervision of their offices appeared beneath the exalted dignity of most District Court Judges and in the absence of regular inspection clerks grew slack in the discharge of their duties and bailiffs misappro-

30. CO137/532 (Con) Norman to Holland 22/11/1887.
31. CO137/518/469 Norman to Derby 8/11/1884 (With note by member of the Colonial Office).

priated funds. Thus "habits of intemperance and debauchery[32] led in 1883 to the trial and dismissal of James Rhodes Facey, Assistant Clerk of the Central District Court, whilst culpable laxity in the supervision of the office of the Bailiff of the Northern District Court conduced in the very year before the abolition of the District Courts to the fraud of Mr. D.R. De Casseres who escaped to Colon[33] and to the mis-appropriation of the sum of £1-6-6 by John F.Rickard, Bailiff for near 20 years of the Central District Court.

(ii) The Petty Sessions Court

Three changes of significance had affected the operations of the Petty Sessions Court in the post-rebellion period. First, Law 2 of 1866, as we have already seen, enabled the Governor to appoint any justice of the peace a stipendiary justice and to give to such justice all the powers of two magistrates. Secondly, by Law 4 of 1870 the Petty Debt Courts were abolished and this jurisdiction of the justices ceased.[34] Thirdly by Law 3 of 1870 the duties in Petty Sessions which formerly were discharged by Clerks of the Peace in their capacity as Magistrates' Clerks were upon the abolition of these offices conducted by a new officer styled Clerk of Petty Sessions.

Despite the enabling powers of Law 2 of 1866 no new stipendiary justices were immediately appointed, presumably because of the actual and

32. CO137/508/3 Musgrave to Derby 3/1/1883.
33. CO137/534/17 Norman to Holland 14/1/1888.
34. The jurisdiction was now exercised by the District Courts. In addition the abuses of the Petty Debt Collectors which had become a great grievance ended, only to be resumed by the bailiffs.

anticipated expenditure upon the Police Force and the District Courts.

The lack of fit persons to serve as justices as well as irregularity in the sittings of the petty sessions court persisted into the post-rebellion era, alleviated in some measure perhaps by the exercise by accused parties of the statutory right to elect to have their cases transferred from the justices' courts to the District Courts for trial. On the other hand, however, magistrates, affecting great umbrage at the insult to their magisterial status, implied in the right of election encouraged one another to abandon or neglect their duties rather than "submissively accept the ... degradation."[35]

When it became impossible in 1872 further to postpone the appointment of two Stipendiary Magistrates Rushworth, the Lieutenant Governor, confirmed that for a long time now the want of a sufficient number of magistrates able and willing to hold Courts of Petty Sessions has been felt generally in Jamaica and latterly this want has become too pressing to be left any longer unprovided for. Cases have occurred in which even in Parish Town Courts have been adjourned by the Clerks again and again because no magistrate was present and in some districts that are ... comparatively populous, no Petty Sessions Court is ever held nearer than 15 or 20 miles off."[36]

Eight years later the situation had not altered materially for the better for "the business of the Courts of Petty Sessions were often in

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35. From the Trelawney and Public Advertiser of 25/4/1867. CO137/433.
36. CO137/465/202 Rushworth to Kimberley 10/4/1872 "St. Catherine St. Elizabeth and Portland badly off" Rushworth added.

arrears in consequence of the non-attendance of unpaid magistrates"[37] but "other claims did not allow of the desirable object of providing a Stipendiary Magistrate for each parish."[38]

Apart from a general power of exercising all the ministerial powers of a justice of the peace (except reading the Riot Act) which could be exercised by a single justice of the peace out of sessions, clerks of the Petty Sessions Courts were especially empowered "to take all necessary preliminary examinations and depositions on charges or informations for indictable offences and commit persons for trial before the Circuit and District Courts."[39] As District Court Judges as well as Justices of the Peace exercised similar powers of committal, there thus existed within substantially the same jurisdictions three judicial officers, two of whom were remunerated from the public Treasury, discharging identical functions. Likewise there was duplication of the criminal functions of the Clerk of the District Court and the Clerk of Petty Sessions, which might with a great saving of time and expense and with increased efficiency in addition have been regulated in one office and discharged by or under the supervision of one officer.

Of the 14 clerks of Petty Sessions, the majority in the 1880's were not professional gentlemen and "as a rule were not men of sufficient experience, knowledge of the world or legal knowledge to render them fit

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37. CO137/496/176 Musgrave to Kimberley 17/7/1880.
38. CO137/496/265 Musgrave to Kimberley 5/4/1880.
39. Section 12 of Law 3 of 1870.

to be trusted as independent officers with the important duty of deciding on all criminal cases whether a case brought before them should be dismissed or sent for trial, whether it would be to the District or Circuit Court." [40] In addition a great deal of the cases they dealt with were of a very trivial description, notably the numerous praedial larceny cases, involving frequent charges of stealing growing produce of the value of one penny, and yet such cases had to undergo a preliminary examination and tried altogether with as much form and circumstances as attended prosecutions for murder in the Circuit Courts. [41]

Want of supervision too, enabled Clerks of Petty Sessions to imitate the conduct of their predecessors, the Clerks of the Peace. Except when attending the justices they to a great extent became "independent potentates and masters of their own movement," did not sit with regularity as a result of which the delays in their courts were in some cases very great.

(iii) The Supreme Court

For purposes of criticism judicial administration in the Supreme Court divides itself into separate consideration of its functions as a body of original and of appellate jurisdiction. (a) As a Court of first instance: In civil matters the Attorney General was critical of the utility of the Civil Procedure Code. "Enormous expense attended

40. CO137/515/172 Norman to Derby 2/5/1884 (Conveying views of H.H. Hocking, the Attorney General.)

41. CO137/515/172 Norman to Derby 2/5/1884 (Conveying views of H.H. Hocking, the Attorney General.)

upon proceedings in the Supreme Court owing in great measure to it, the system of pleading introduced thereby having given rise to most voluminous statements of claim and defence which appear to be utterly unproductive of results in bringing the parties to an issue."[42] Nor was he satisfied merely with the abolition of the grand jury:[43] "I cannot express myself as wedded to trial by jury especially in a small community where many conflicting interests pervail."[44] These sentiments had the full concurrence of Mr. Justice Kerr to whom "the cost of law in the Supreme Court (which included exorbitant professional charges)[44a] was nothing less than a scandal and a deterrence to parties resorting to it" and the petty jury "an institution that was working worse and worse every day, their errors aggravating by the necessity for new trials the cost of litigation."[45] Likewise this judge was dis-enchanted with the Civil Procedure Code and would have abolished the system of pleading, resorting to trials in the Supreme Court upon summons only as in the District Courts and County Courts in England.

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42. CO137/51/384 Norman to Derby 16/9/1884.
43. CO137/51/384 Norman to Derby 16/9/1884. "The fatal consequences, in some classes of cases, occasionally arising in this colony from the former state of the law on this point, were exemplified in the result of the indictment of W.Ramsay a civilian who had acted as a Military Officer during the disturbance in 1865. His case came before a bench of Justices. They did not commit. It then was taken before a Grand Jury by the A.G. They ignored the Bill CO137/457/114 Grant to Kimberley 1871 Note by Kimberley d/d 15/9/1871 "I only wish we could abolish this useless institution in England." The wish was realised in 1934.
44. Ibid.
44a. My interpolation.
45. CO137/51/384 Norman to Derby 18/9/1884.

The establishment of the District Courts had a radical effect upon the operations of the Supreme Court, particularly in its appellate capacity. The extent of jurisdiction given to the former so considerably reduced the amount of business of all sorts in the latter that in 1871 the Supreme Court Judges were described as "perhaps the most un-occupied men in the colony."[46] As a measure of economy, therefore, their numbers had in 1870 been reduced from four to three, and two years later to two, namely a Chief Justice and one Puisne Judge. Simultaneous with the reduction in 1870 the number of Circuit Court Stations was reduced from thirteen to six "but by so doing the areas were extended over which each Court exercised jurisdiction and in many instances enforced upon jurors witnesses and parties a longer journey than of recent years. Whilst in the case of jurors, there was some compensation in their less frequent attendance in that capacity, there was fresh hardship imposed upon parties and their witnesses in the increased costs of litigation attendant on the reduction of the number of courts.[47]

Under the Judicature Law of 1879 the Governor in Privy Council was given power[48] to appoint the times and places for holding the Circuit Courts but the authority was never invoked, the arrangements under the repealed Law 2 of 1870 remained unchanged and so also did the hardships and grievances.

46. CO137/457/103 Grant to Kimberley 4/8/1871 (view of Mr. Justice Kerr).
47. CO137/448/58 Grant to Granville 10/3/1870 (Conveying Attorney General Heslop's Report on Law 2 of 1870 to reduce the number of Assistant Judges of the Supreme Court, to provide compensation to one retiring judge and to alter the number and the times and places of holding the several Circuit Courts.
48. See Chap. 16, p.

(b) As an Appellate body: The composition of the Supreme Court, whether constituted by two judges, as it was after 1872, or by three after 1879, was not calculated in the respective circumstances to command public confidence. Sir John Peter Grant had had a firm conviction of the insuperable virtues of an appellate court of two judges. To him "an appellate court so composed was obviously superior to one of three judges, for a judgment should not be reversed except by a weighter judgment ... With an appellate court of three judges ... it is possible for the judgment of two judges of greater weight to be reversed by that of two judges of lesser weight."[49] This specious argument had had "much force"[50] too with the Colonial Secretary and with it Sir Harold Taylor "thoroughly agreed."[51] Whether it had also secured the concurrence of the Supreme Court judges does not appear, but this pursuit of economy at the expense of efficiency in the administration of justice brought great opprobrium upon the Court and upon the persons of its incumbents.

Law 18 of 1872 by which the composition of the Court was reduced to two had provided that "whenever the Chief Justice and the Puisne Judge do not agree as to what should be the decision of the court, the application to the Court shall fall to the ground and be dismissed. For the purposes of appeal from the Supreme Court, however, a judgment

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49. CO137/459/179 Grant to Kimberley 9/12/1871.
50 & Notes by the respective parties in the Colonial Office File.
51.

of the Court may be entered against the application, and if there is no application against which a judgment can be entered then the judgment may be entered as the Court may direct."[52] In 1876 a memorial of the Jamaica Association[53] carried the grave imputation that "the judges of the Supreme Court arrive at a singular consonance of opinion by some mutual concessions."[54] That same year a deputation from the West India Committee complained to the Secretary of State that appeals were not only too difficult and costly but were in fact "little more than nominal in cases of appeals from the Supreme and Circuit Courts."[55] Their contention was incontravertible. "The Appeal Court consists of a Chief Justice and a Puisne Judge, or in other words, the Court is formed by the association with another of the judge who originally tried the case. Either of these judges who tried the case in the court below would support his own decision when the case came before him again on appeal and although the other judge may dissent from that decision and desire to reverse it, the original judgment stands, notwithstanding such difference of opinion. Whether the two judges of the Appeal Court differ or whether they agree, the judgment in the Court below is necessarily sustained. The result is more cost for less justice."[55]

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52. Section 3.
53. Memorial date 2/12/1876. The letter was signed by Altamont De Cordova - failed as a shopkeeper was once a Member of the House of Assembly and H.W. Da Costa. See also CO137/482/220 Grey to Carnarvon 9/12/1884.
54. CO137/482/220 Grey to Carnarvon.
55. 2/12/1876.

In due course wisdom gained a partial triumph in the counsels of the Colonial Office where the conclusion was reached that "an appeal Court of two judges is obviously a bad Court but without increasing the strength of the Court and its expense this cannot be altered."[56] In 1877 the Jamaica Association renewed their representation for "a change in the Supreme Court in matters of appeal," and were not consoled by the reply that "the Secretary of State had no objection to the Chief Justice being given a casting vote[57] in cases of disagreement according to the system of judicature in force in some colonies."[58]

With a change in the administration there also came a change of gubernational outlook on the matter of the Appeal Court. Sir Anthony Musgrave expressed himself as being one who "entertained a strong personal opinion based on experience gathered elsewhere as to the expediency of a third judge,"[59] and resolved to deliver the Court from the insult of public suspicion and dissatisfaction. The remedy was in effect to transfer the inefficiency from the Supreme Court to the District Courts. Those Courts were in 1879 reduced from 7 to 5 and the savings in salaries effected thereby were appropriated in part to the remuneration of a second Puisne judge who together with the other Puisne judge were empowered to exercise the jurisdiction of the newly created City of Kingston Court. The Supreme Court as a Court of Appeal

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56. Note in CO137/482/220 Grey to Carnarvon 9/12/1876.
57. CO137/483.
58. CO137/483.
59. CO137/485 (Con) Musgrave to Carnarvon 7/11/1877.

was reconstructed, as we have already seen, and its powers defined. The changes however did not prove entirely satisfactory. That judges of the Supreme Court should daily sit in a court of inferior jurisdiction was lowering to the dignity of these high judicial officers, particularly in the context of an unstable heterogeneous society. The sacrifice of the dignity of the court on the altar of economy was wisdom of a very questionable character. Additionally, appeals from the City of Kingston Court as well as from the Supreme Court whether heard by two or by three judges of the Supreme Court had inherent defects, the first, because it continued to be a "two-judge" court, the second, because it necessarily involved one of the judges sitting in appeals from himself. In this condition, however, the appellate work of the country continued, whilst in the case of appeals from the District Courts, the right, for sociological and economic reasons, proved "practically useless."[60] The class of people who are the principal litigants in the District Courts are frequently ignorant," Musgrave reported ,"they cannot always afford the necessary expense for legal advice and the forms and limitations of the law are not understood."[60]

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60. CO137/496/262 Musgrave to Kimberley 2/4/1880.
The most retarding factor in the whole society was of course the slow growth and spread of education.

(B) The agitation for reform

In examining the progress of events after 1865, and in looking at the operation of the forces in society that led again to changes in the legal system, the economics of legal reform and the social and political climate in which it was accomplished were of the utmost importance.

We have seen that the bankrupt state of the Treasury as well as the financial demands of the programme of reform which the new administration found imperative to undertake, had rendered increased taxation inevitable. To the landed classes, habituated over two centuries to the avoidance of their social responsibilities, taxation was inimical in principle and the revenue measures of the Government "fiscal spoilation."[61] Not unnaturally, therefore, the Police Force and the District Courts, the earliest and most prominent objects upon which the increased taxes were spent became objects of a certain unpopularity and dislike.[62]

By Law 20 of 1867 a fundamental measure of administrative reform had been effected by the reduction and re-organisation of the parochial

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61. Article in the Trelawney and Public Advertiser d/d 25/4/1867 by E.G.Barrett J.P. and later elected Member of the Legislative Council. In 1867 Memorialists from St. Ann and Trelawney petitioned the Crown against the revenue measures of Grant who replied "The whole argument of both memorialists is against any new tax whatsoever." CO137/425.
62. CO137/459/173 Grant to Kimberley 1/12/1871 "Both institutions were unpopular here with Newspaper Editors and Writers who do not represent the people."

divisions of the country. This legislative re-arrangement, in its objective essentially a measure of economy, and as such one calculated to meet the wishes of the landed classes, did not in fact do so. The abolition of the parochial vestries, the consequential reduction in the number of custodes, the cessation of local patronage, the denigration of the local magistrates, ever sensitive of every particle of cherished influence, and the loss of power of the petty lords of the parishes alienated the feelings of proprietors and magistrates, ill-disposing them towards the system of Crown Colony Government whose growing achievements were an indictment of their past.

We have noted also that economic necessity among other factors had forced upon the Government the acceptance of a measure of gradualism in the execution of the programme of legal reform. In the necessarily protracted process of re-construction, therefore, infection of the new with some of the defects of the old system proved inevitable. "The time and energies of Governor Grant were of necessity devoted to the demolition of the old arrangements, for which the substitution of the new was necessarily imperfect"[63] and in the opinion of Musgrave "it was never rendered complete and symmetrical."[64] Thus the multiplicity of offices and duplication of functions already noticed scarred the structure of the inferior and magisterial courts. For the same reason too did corruption re-appear in some of the personnel of the new courts.

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63. CO137/490/98 Musgrave to Hick Beach 23/6/1879.
64. Ibid.

Dishonesty in clerks of the District Courts, embezzlements by bailiffs, want of professional ability in some District Court Judges and misconduct in others, albeit some of the ablest, most impartial and fearless, gave to the new legal system a distorted picture of institutional unsoundness capable of exploitation with ruthless and vicious effect by the enemies of Crown Colony Government.

Social attitudes too had not undergone any fundamental change. Whites still regarded the blacks, and perhaps to a less degree the coloureds, as from a social point of view, of no account whatever, and the sentiments of Mr. Joseph Moses Bravo, Justice of the Peace, were at best an extreme expression of common feelings even in magisterial circles: "Not all the powers of Paternal Government the Colonial Secretary in Downing Street and Societies reeking with the saintly odour and pseudo-philanthropy of Exeter Hall will ever remove from the negro and the negroes' spurious offspring the perpetual curse the God of the universe set upon the fratricide Cain and his descendants, and of these we have plenty in Jamaica."[65] Blacks on their part viewed the rest of society with deepest distrust, whilst "possessing like the Irish peasantry whom they closely resembled in many respects, a very keen sense of justice and sensitive in the last degree to wrong."[66]

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65. CO137/472/182 Grant to Kimberley (Forwarding letter of J.M.Bravo to District Court Judge Bruce).
66. CO137/518/384 Norman to Derby 16/9/1884 (forwarding views of Mr. Justice Ker).

To satisfy the demands of public justice in conditions of such social disharmony, the right to elect to be tried before the District Courts rather than by magistrates had been introduced and "it was intended to preclude any possibility of complaint on the part of the labouring classes and the coloured race (to whom nine-tenths of the cases that came before Justices related) on the ground that they were tried by magistrates who were employers of labour and belonged to a different race."[67] The introduction of the principle, however, was a grave blow to magisterial pride. In their eyes it signified governmental identification with the distrust felt by the lower orders of the administration of justice in their courts, and, in the abolition of the grand jury on which they alone sat for some years past, and of their jurisdiction in petty debt, they read with bitterness the sure decline of magisterial consequence.[68]

Loss of power in the magisterial courts was the gain of the District Courts and the unpopularity of these latter courts which intensified with the passage of time was "greatly due to the jealousy of the Courts that was felt by those who were in the position of justices of the peace and who were impatient, at not possessing the

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67. CO137/51/384 Norman to Derby 16/9/1884 (Conveying views of Chief Justice Ellis and Mr. Justice Curran).
68. E.G.Barrett, J.P. St. Ann expressed it thus. "Living as we do, a few educated and intelligent men, among large masses of an alien race, upon loss of reverence must follow loss of authority"

powers of those courts."[69] Further the resounding denunciations which emanated from the District Courts of those distinctions before the law which white society had maintained in slavery, and the utter failure to corrupt the judges by epistolary appeals to identify of racial origins infuriated the proprietary body and excited their growing hate. "As in the case of the English County Courts at their first establishment so the District Courts offended the prejudices of two influential sections of the community, the legal practitioners naturally unfriendly to cheap law, and the employers of labour, never covetous of strict impartiality in decisions of dispute between the master and servant, planter and labourer. In the days still regretted by some ... to the great body of the population the door of redress may be said to have been for all practical purposes closed ... But the District Courts came to remedy this state of things and of course had to pay the customary price."[70]

Lastly was the new political system of government comprised of a Governor and a Legislative Council of eight official and six unofficial members, the latter being chiefly of the planter class.[71]

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69. CO137/518 (Conf) Norman to Derby 1/4/1884. It was also due to the failings of certain of the judges sent out from England and to the non-appointment of Jamaicans as well or to certain defects in the administration of the Courts."
70. CO137/51/384 Norman to Derby 16/9/1884 (Views of Mr. Justice Ker).
71. As was to be expected of the indolent and desultory white planters Grant found "a very great difference in the regularity with which the unofficial members of the Jamaica Council attend our meetings and assist in our consultations" and he tried unsuccessfully to have the tenure of their appointment changed "from life to period of tour of duty" in order to stimulate attendance. CO137/469 (Conf) Grant to Kimberley 3/2/1873.

There was no elected element in the Chambers of the Legislature and up to 1876 at least, any question of their participation in the affairs of government did not, in the view of the Colonial Office call for a moment's consideration. "They had succeeded in getting rid of an old constitution that worked as badly as was possible and having obtained one that put full power of legislation in (in fact) the Governor and Secretary of State, it would be folly to surrender that power."[72] Such however were not the sentiments of those in whose hands fiscal and political power had hitherto rested. "As was to be expected Government was so arbitrary that it would not be cordially accepted and was from the first most unpopular."[73]

No words of execration were spared by the Press in the denunciations of the "un-representative" government.. It was "a fatuous autocracy wringing from us the last farthing that unlimited and unscrupulous power can extort"[74] and its expatriate officers, judicial, legal, or otherwise "a crowd of alien locusts that appear to be insatiable, never crying "enough"."[74]

The "vicious and well-paid Press"[75] had maintained so persistent and voluble a campaign of hostility to the Government that when in 1877

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72. CO137/482/220 Grey to Carnarvon Note on Despatch made in the Colonial Office in respect of the representations of the Jamaica Association of 1876.
73. Taken from "A Statement of the Causes and Objects of the Present Political Agitation in Jamaica" dated 20/1/1883.
74. From article in The Trelawney and Public Advertiser dated 25/4/1867 by E.G.Barrett Justice of the Peace and later elected member of Leg. Council.
75. CO137/508/41 Musgrave to Derby 29/1/1883.

Musgrave assumed the administration he had seen so many bold and uncontradicted statements in the coloured newspapers furnished to him in England and was aware of so much complaint on the part of the West India Committee and their informants as regards the public service and affairs of the Government and the condition of the negro population that he came with a strong impression that there was a great amount of irregularity, mal-administration and waste to correct, if nothing worse, and with his sympathies enlisted on behalf of the sugar-planting body adverse to the negro."[76]

The inevitable gubernational disillusionment was almost traumatic. "I could not believe," Musgrave reported to the Secretary of State "that all the charges were, as I have found them to be, substantially without foundation. I do not pretend to say that no faults are to be found in the Civil Service, that no improvements or organisation are possible or that no economy can be effected. I had had however no experience in any other colony of the crass ignorance, puerile misconception and unprincipled deliberate misrepresentations in respect of public affairs which I have found to be so constantly common in Jamaica, and in respect of which there is no shame ... Gross perversions of the truth, mendacious suggestions of what is known to be false and disingenuous suppression of established facts by those who are well informed, in order that the prejudices of those who are ignorant of the true state of the case

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76. CO137/490 (Conf.) Musgrave to Hicks Beach 23/6/1879.

should be excited and used for the purposes of the designing are quite another kind of political proceeding of which ... I have not hitherto met with examples of the same kind in any other country. But proceedings of the kind are used here with great success by portions of the local press, with the countenance and support of leading local politicians for the purpose of influencing the West India Committee in London, and in the hope through them of producing an effect upon your Department favourable to their designs ... The chief object in view is to discredit the present form of government, to produce the belief that it is extravagant and corrupt in the hope of Her Majesty's Government will thus be led to consent to such a modification of the Constitution as will restore to the handful of sugar planters and their allies, the newspaper editors and would-be political adventurers, the effective control of the legislation and of the revenues raised from the negro population."[77]

It was in these circumstances of economic, social and political ferment that the reverberations through the Chambers of the Legislature of a decision of 1881 of the Full Court[78] intensified agitation against

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77. CO137/490 (Conf.) Musgrave to Hicks Beach 23/6/1749.
78. Musgrave v Pulido: Stephens (Jamaica) Report Vol. 2. pp. 1757-63. An unsatisfactory aspect of the case was that Mr. Justice Ker (together with Mr. Justice Curran) sat in judgment upon his own decision at first instance before the Kingston Circuit Court in accordance with the prevailing appellate system under Law 24 of 1879. This case went on appeal to the Privy Council See LR. 5 App. p.111.

the existing system of political government, enveloping the legal system in another clamour for alteration.

In 1877 the Florence under the command of General Pulido called at Port Royal in a disabled condition. In compliance with municipal regulations combustibles on board were unloaded and stored at Fort Augusta. After repairs had been effected, release of the arms was sought, but the Governor, acting upon an erroneous view of the law tendered by the Attorney General, ordered detention of both vessel and arms, and in the ensuing action damages and costs totalling near £8,000 were awarded against him.

Thereupon the question arose whether the Governor, or the Jamaica Legislature or the Imperial Government should pay the award and the Governor was instructed to apply to the Legislature for a vote on that behalf.[79] The Council refused to do so on the ground that the Governor had acted in imperial, not local, interests and the Auditor General and Crown Solicitor, unofficial members, resigned. Later when the Council voted a half of the award, the un-official members resigned en bloc.

The prickly issue, pregnant with material for popular appeal, sustained the energies of the Press for the next three years in vigorous and lurid assaults upon the financial administration of government,

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79. "His Excellency should be indemnified from any personal loss in consequence of his having acted in his personal capacity upon an erroneous view of the Law after duly consulting the A.G. and in direct accordance with his advice" ... Kimberley to Musgrave 1881.

upon the Governor and upon the expatriate officials of the Public Service. Sparks lit by the solitary error of the Attorney General O'Malley received generous and timely support from the misconduct of his expatriate colleagues of the District Courts Bench and were dramatised in the Falmouth Gazette as "palming off on this ill-starred colony ignorant and worthless men to fill important situations in it."[80] Salaries paid to officials were made to appear as so many "sums wrung from the exhausted Treasury of an un-represented people,"[81] and whilst the deficit of £10,000 received constant magnification in the Colonial Standard, local organ of the West India Committee, the circumstance of its existence, namely the assumption by the Government of the Sugar Planters Immigration debts, passed without notice. The discharge of the obligations of neutrality from local revenues, largely provided by the negro population became the basis of a clarion call for "elective representation in the Legislative Council,"[82] and, contemporaneous with

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80. No Press recalled "the eminent abilities of O'Malley's immediate Predecessor Mr. Schalch, the painstaking and conscientious discharge of his public duties, nor the solid worth of his personal character which commanded the esteem and respect of all" CO137/476/25 Grant to Kimberley 31/1/1874. Mr. Schalch died of yellow fever on 31/12/1873.
81. Falmouth Gazette 1881.
82. Falmouth Gazette 1881.
"The Jews are the loudest shouters and they will not rest content without the substantial power which means unlimited jobbery" Colonial Office Comment on Musgrave Despatch CO137/509/ of 17/4/1883 re the political agitators.

this agitation, the Press so intimidated public officials by their villifications that in 1883 the Governor confessed the impossibility he experienced "in finding gentlemen both qualified and willing to accept appointment as an unofficial member of the Council"[83] for "since the resignation (in 1881) of the late members no-one wants to take on the job and bring upon himself the abuse of the newspapers."[83]

A Despatch of early 1884 carried terms of solution of the constitutional impasse. The Governor, four ex-officio members, not more than five nominated members and nine elected members replaced the old Council which had latterly been constituted of the Governor, eight official and six unofficial members.[84]

In the campaign which preceded the election to the new Council[85]

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83. CO137/508 (Confidential) Musgrave to Kimberley 22/1/1883.
84. Musgrave had suggested alteration of the Orders in Council of 1866 and 1869 to render the Legislative Council a body of "Official Members only" but Kimberley's view was that "you cannot long govern a colony like Jamaica without representative institutions in some shape." The proposals were opposed by the Press and by the Jewish Community of Kingston in particular. Their main objections were against the non-official body having a majority in the Council and the Governor presiding over its deliberations. The Colonial Office ignored these protestations.
85. It met for the first time on 30/9/1884. Other provisions of the Order in Council were (a) a two-third vote of elected members should govern the Council in financial matters, and in other matters the unanimous opinion of elected members should not be over-ruled unless the Governor thought the matter one of paramount importance in the public interest and he was required to make an immediate report to the Secretary of State of any exercise of this extraordinary power (b) Six Members constituted a Quorum (c) a small Civil List was provided but the Judges were not included.

14 candidates, five of them attorneys-at-law, contested the nine elected seats, and prominent on the political manifestos stood the abolition of the District Courts which "as the creatures of an unpopular form of government came in for its full share of the interested clamour raised against the political constitution."[86] "The District Courts must go" became the campaign slogan of Mr. Palache, "a clever young solicitor professionally bound to look upon inexpensive law as the very abomination of abominations."[87] Not to be outdone, Mr. Harvey, Attorney-at-law and a justice of the peace promised his constituents of 1,232 voters (out of a population of 61,110) the removal of the right of election, and Mr. Farquharson likewise committed himself to his electors, and once again was the Judiciary reduced in public estimation to the level of a mere debating point for cheap soap-box demagoguery.[88]

Political hustings drew some plausible strength from a Report of English Royal Commissions on Finance in the West Indies,[89] one of whose recommendations, namely the abolition of the District Courts, lent a specious air of support to the political agitators and electioneering promises. That Report, however, embodying a number of ancillary

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86. CO137/518/384 Norman to Derby 16/9/1884 (forwarding views of Mr. Justice Ker).
87. Ibid.
88. For previous instance, see Chapter 10.
89. CO137/518/384 Norman to Derby 16/9/1884 "They had paid a short visit to the island and had to report on every branch of the administration."

recommendations, such as (1) the replacement of the District Courts by professional stipendiary magistrates with criminal jurisdiction co-extensive with that conferred on the District Court Judges and with civil jurisdiction in cases under £20 and (2) the transference to the Supreme Court Judges (whose complement should be increased to four) sitting as Circuit Court Judges of the jurisdiction in civil cases exceeding £20 formerly exercised by the District Court Judges, "conceded the requirement of some system of intermediate courts presided over by paid and skilled officers."[90] With the soundness of this latter principle the Supreme Court Judges agreed, but to the recommendations as a whole they took strong objection as "the changes recommended must inevitably be attended with many great hardships to suitors in cases of £20 and over who would lose the facilities of 32 accessible District Courts available every month in exchange for those of 6 Circuit Court Stations available at increased expenditure to suitors, witnesses and jurors only every four months."[91] Moreover they asked "What ... in the way of judicial courage, judgment, discretion and general legal and intellectual ability to say nothing of moral weight and prestige could you from England, Scotland or Ireland or the other colonies

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90. CO137/518/384 Norman to Derby 16/9/1884 (Forwarding observation on the Report by H.H.Hocking Attorney General).
91. CO137/518/384 Norman to Derby 16/9/1884 (views of C.J.Gib-Ellis and Mr. Justice Curran).

expect to get for £500 a year"[92] as a professional stipendiary magistrate? Contrari-wise, the Judges contended that the defects of the District Court System, namely, delays in disposing of cases due to frequent adjournments, the position of independence assumed by District Court Judges towards the Executive, high tariff of fees and general judicial misconduct, were "not evils inherent in the system but proceeded from inexpedient laws and from absence of provisions for the proper regulation of the Courts."[93]

The Governor likewise considered that "the great changes recommended by the Commissioners could not be accepted off-hand for although there is a great feeling against the District Courts in Jamaica there are many people deeply interested in the welfare of the poorer classes who would regret their abolition and who think these Courts should be reformed rather than abolished. The reforms I would recommend are (a) a very careful selection of gentlemen for the post of judge (b) a system by which all unnecessary delays should be avoided and the work of the Court punctually and promptly performed (c) reduction of the scale of fees and (d) a cancelment of the rule by which the whole of the fees possible in a cause have to be paid down in a lump sum in advance. I believe if all the improvements above-mentioned could be

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92. CO137/518/384 Norman to Derby 16/9/1884. Views of Mr. Justice Ker. The Governor said "I am quite certain that the sort of gentlemen whom it would be desirable to obtain as Stipendiary Magistrates, if they were to have the responsible duties proposed for them and were members of a recognised Bar would not be forthcoming if the salary was only £500 a year with a Travelling Allowance of £100 a year which the Commissioners suggest, it would be quite inadequate even for moving over Jamaica"

93. CO137/518/384 Norman to Derby 16/9/1884 (views of C.J.Gib-Ellis and Mr. Justice Curran).

effected the District Courts would not only be the most useful but also the most popular institution, and if a proportion of the appointments were given to advocates of the Supreme Court of Jamaica I think their popularity would be assured."[94]

Dissatisfaction in informed and official circles of Government with the report as a whole of the English Royal Commissioners therefore led to the appointment in early 1884 of a local Commission of competent knowledge and experience in island affairs.[95] Their Report in February 1886, like that of the English Commissioners recognised and emphasized "the necessity to retain intermediate Courts presided over by paid officers possessing legal qualifications."[96] Other recommendations included the merger of the two systems of inferior courts under a staff of ten Parochial Judges who could be assisted in summary jurisdiction by unpaid local magistrates as assessors. Thereby the thorny problem of the right of election would be circumvented. These Parochial Courts were to be, like their predecessors, Courts of Record, their judges receiving salaries less than those of the District Court Judges, namely between £700 and £900 per annum together with travelling allowances. The double set of clerks then functioning inefficiently and at unnecessary cost in the District Courts and Petty Sessions Courts

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94. CO137/518/384 Norman to Derby 16/9/1884 (Views of C.J.Gib-Ellis and Mr. Justice Curran).
95. The Commission consisted of Sir Adam Gib-Ellis Chief Justice as Chairman, Mr (later Sir) H.H.Hocking Attorney General, Robert Craig and Michael Solomon, Members of the Legislative Council, Mr. Ernst District Court Judge, Thomas B. Oughton, Advocate and George Stiebel, a prominent negro.
96. CO137/531/183 Norman to Granville 14/6/1887 (Enclosing Report of Hocking A.G. on Law 17 of 1887.

were to be displaced, and instead, each Parochial Court would have its clerk and if necessary, assistant clerks. Court fees were to be reduced, [97] the supervision of the clerks and Bailiffs was to be strengthened and the law in relation to judgment debtor summons was to be amended. Preliminary magisterial enquiries in the case of indictable offences were to be dispensed with and Parochial judges were to be given full liberty to refer a case at any stage up to the close of the case for the prosecution to the Circuit Courts if for any reason they should consider it fit to do so. Two other recommendations by reason of their novelty deserve mention. The Commissioners proposed that Parochial Judges should not be merely judges, but should be a kind of President of the parish [98] with a standing Commission to report on all matters and persons within the parish and with authority to arbitrate on tax disputes. Secondly Parochial Judges were to be placed under some Executive control, submitting reports to the Attorney General for the Governor's information. [99]

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97. The Legislature alas! could not compel practitioners to reduce their charges which "slammed the door in the face of the humble suitor" said Mr.Justice Ker. Court Fees in the District Courts were reduced by Law 28 of 1886.

98. The system of governing through Custodes was becoming "inconvenient" CO137/515 Conf.Norman to Derby 5/5/1884.

99. The Colonial Office considered the Report "a very good and clear one. It certainly justifies generally that of thevRoyal Commissioners of 1883 while for obvious reasons its conclusions are far more valuable than those of our Commission" but they disapproved of the penultimate recommendation "It is unwise to get the Parochial Judges who would have had enough work mixed up in every parochial dispute."

In the spring of 1886 this long-awaited Report and its recommendations came before the Council in the form of a Bill for the reconstitution of the lower Courts of the island. In effect a repeal and re-enactment of the District Courts Law (Law 22 of 1874)[100] embodying alterations consequent on the Report, the Parochial Courts Bill met with considerable opposition from two solicitors who were elected members of the Legislature.[101] "Their object was to do away with an intermediate Court, to throw a great deal more work on the Supreme Court and to leave all the rest of the judicial work of the island to the honorary justices with a greatly enlarged criminal and also a civil jurisdiction."[102] In short, the solicitors desired a return to the system of thirty years past introduced under the Judicial Amendment Act, a legal system which was in many ways contributable to the Morant Bay Rebellion but which nevertheless "had enhanced the gain of the old established Legal Firms of Spanish Town and Kingston through whose agency all suits necessarily had to be conducted."[103]

For the next year and a half re-organisation of the legal system hung in debate in the Legislature and became the subject matter of two provisional Bills before the final Bill became in December 1887 Law 43 of 1887, the Resident Magistrates' Law.

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100. A Statute which had consolidated all the Laws affecting the District Courts from 1867 onwards.
101. Mr. Wellesley Bourke who seems to have got into the Council on a bye-election and Mr. Palache.
102. CO137/531/183 Norman to Granville 14/6/1887 (Report of Hocking A.G. on Law 17 of 1887.
103. CO137/330/20 Barkly to Labouchere 8/2/1856. See Chapter 12.

The protraction of this urgent and important matter[104] was debited to the persistent opposition of the legal members of the Legislature. So persistent indeed were they that the Governor assented to the appointment of a select Committee to enquire into the working of the Supreme Court and withdrew the Parochial Courts Bill which was then before the Council. The select Committee continued their labours during the recess and the Government became aware that they were travelling considerably wide of the question submitted to them and that their object was not only to reform the Supreme Court but to do away with an intermediate Court and entrust the unpaid justices in Petty Sessions with wide criminal and civil jurisdiction.[105] Under these circumstances, as the object of Government was "to retain Courts exercising an intermediate jurisdiction presided over by paid officers possessing legal qualifications", and as it was clear that a Bill for that object would meet with considerable opposition, it was determined to abandon the idea of introducing a complete measure and taking the existing District Courts Law as a foundation, to introduce into it such alterations and amendments as were necessary in order to reform the lower Courts in the way desired. Accordingly a Bill of some five and twenty clauses was introduced. It was determined to discard the title recommended of "Parochial Judges and Courts" and to adhere to the old style of District Court. Accordingly the second Bill was styled a Bill to reconstitute the District Courts."

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104. By 1887 all the District Courts were being worked by acting officers - some of them local Solicitors in actual practice and one a planter (a retired barrister). "An absurd scheme" in the view of the Colonial Office.

105. CO137/531/183 Norman to Granville 14/6/1887.

Its main object was to provide that the District Court Judge should exercise his functions within a smaller area and that he should within that area be also stipendiary Justice and perform the judicial work then entrusted to the Clerks of Petty Sessions and that all trials before him should be conducted in a summary manner without preliminary enquiry.

In early 1887 this Bill was introduced into the Council and before its second reading, the Select Committee presented their report. The second reading was accordingly deferred and the Government met the motion for the adoption of the report with an amendment to the effect that it "was necessary to retain intermediate Courts presided over by paid officers possessing legal qualifications." Debate on the subject commenced and was adjourned. During the adjournment, the members of the Select Committee and their friends, finding that they would have been beaten on the main question, proposed terms of capitulation which were agreed to and Jamaica was spared a repetition of events which might have led again to another rebellion.

None of the terms agreed upon affected the District Courts Bill. The concessions related to the Supreme Court as to which the Government had not expressed any adverse opinion. An informal conference was then held on the subject of the Bill and in deference to a very general wish on the part of the elected members, an alteration was made in the title of the Judicial Officer and it was agreed that he should be styled the Resident Magistrate.[106] This necessitated somewhat of a recasting of the

106. It is probable that this style was calculated to convey the impression that "Magistrates" (with its connotation of Justices of the Peace had in fact supplanted the District Court Judges. Thus election pledges would appear to have been fulfilled.

Bill and accordingly the District Courts Bill was withdrawn and a new one introduced which on the 10th of June 1887 became Law 17 of 1887, the Resident Magistrates' Law.

Of this Law the Attorney General said "On the whole although I think it would have been unpracticable under the circumstances to have brought the measure forward in any other way in view of the opposition that was anticipated and which was offered to it, I am quite sensible of the inconvenience resulting from the incorporation into the law of certain unspecified portions of Law 22 of 1874. Moreover those portions of the latter law which are thus by reference incorporated with this Law stand sadly in want of amendment on many points of detail ..... I hope therefore at the next Session of Council to bring forward a Bill to consolidate the Law under review with such parts of the District Courts Law as are intended to be incorporated with this Law by general reference and to take the opportunity of introducing the amendments recommended by the local Royal Commissioners."[107]

Law 43 of 1887, the second Resident Magistrates' Law fulfilled the hopes of the Attorney General. It repealed Law 17 of 1887 which was never proclaimed as was provided for in that Law,[108] as also the District Court Laws, and established an intermediate judicial system "which answered in all but name to the District Courts."

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107. CO137/531/183 Norman to Granville 14/6/1887 (Conveying Report of Hocking A.G. on Law 17 of 1887.
108. See R.V.Pitter Jamaica Law Report 1934-5.

CHAPTER XVIII

The Resident Magistrates' Courts 1888 - 1900

Law 43 of 1887, "the Resident Magistrates' Law, could not be described as a revolutionary legislative measure. It abolished the District Courts,[1] but in jurisdiction and powers, the substituted Resident Magistrates' Courts were their substantial facsimile. It was essentially a statute of rationalisation, consolidating old measures and attempting innovations here and there. Where the existing system was dilatory or its procedures inconvenient, it sought to apply remedies, and where there was multiplicity of offices or duplication of functions, it introduced unification through the abolition or merger of such offices. Under its procedures, however, were laid down the essential foundation of the intermediate judicial system which has remained down to the present day, considerably influencing the subsequent growth of the magisterial system below it as well as the composition, powers and organisation of the Supreme Court above.

The main features of this Law, together with important amendments made thereto in the course of the succeeding thirteen years down to the

1. It also abolished the City of Kingston Court established under the Judicature Law No. 24 of 1879. See Chapter 14.

end of our study constitute the topic for present consideration.

Organisation and some General Provisions

Sections 3 and 4 of Law 43 of 1887 created the organisational corner-stone of the Resident Magistracy. The former provided as follows: There shall be in every parish in the island a Court to be styled "The Resident Magistrate's Court for the parish of ..... " which shall have and exercise the jurisdiction hereinafter assigned to it:- Provided always that, unless the Governor shall otherwise order, there shall be only one such Court for the combined parishes of Kingston and StAndrew. It shall be lawful for the Governor from time to time, after making any such order, to revoke or renew the same." The latter section empowered the Governor "from time to time to appoint an Officer to be styled "the Resident Magistrate for the parish of ..... " for each parish in the island for which a Resident Magistrate's Court has been provided under this Law".[2]

Within four months however of the establishment of the Courts in April 1880 it became apparent that "the civil work of Kingston was so heavy and so important"[3] as to render one Resident Magistrate unable to

2. Section 5 of the Law enabled the Governor to appoint a Stipendiary Justice for Kingston whose duty it was to assist the Resident Magistrate by presiding in the Police Court when the Resident Magistrate was unable to do so.
3. CO 137/536/348 Norman to Knutsford. W.T.Anderson, R.M. for Kingston and StAndrew had complained thus "In the performance of my duties as R.M. many important points of law arise which render it necessary to refer to legal authorities and devote some time to reading, but in my case, instead of having any time available for such a purpose I have twice as much work as I have the time to get through with. The fact that I am obliged from the circumstances stated to neglect an important part of my duty causes me great mental anxiety".

cope with both Kingston and St. Andrew and it became necessary for the Governor to invoke his special powers under the proviso to section 3. Thus by September 1880 (and until 1898) the parochial divisions of the island constituted the areas of jurisdiction of the fourteen Resident Magistrates Courts of the island.

In the year 1898 reasons of economy and efficiency obliged a reduction of the number of Resident Magistrates and an expansion of their territorial jurisdiction. These ends were achieved by Law 36 of that year, a Law to amend the Resident Magistrates Law Nos. 43 of 1887 and 16 of 1891.[3A] Next, instead of being "appointed" to specified parishes as under the old Law, Resident Magistrates were hereafter to be "assigned", their appointments as Resident Magistrates rendering them capable of exercising and administering the jurisdiction and duties of <u>any</u> Resident Magistrate's Court in the island. The ipsissima verba of sections 5 and 6 of Law 36 of 1898 were: "It shall be lawful for the Governor from time to time to appoint so many Resident Magistrates not exceeding fourteen and not less than nine as he may think necessary to satisfactorily discharge the business of such Courts and every Resident Magistrate so appointed shall by the fact of such appointment be capable of exercising and administering the jurisdiction and duties of any Resident Magistrate's Court in the island. Every Resident Magistrate so

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3A. Section 3 of the amending Law repealed section 4 of the Principal Law but expressly preserved "any right, obligation or liability acquired or incurred thereunder".

appointed shall be judge of such one Resident Magistrate's Court as shall at the time of his appointment be assigned to him, shall have and exercise the jurisdiction thereof and shall be styled "The Resident Magistrate for the parish of ..... "

Section 6 "In addition to having and exercising the jurisdiction of the Resident Magistrate's Court to which he is specially assigned under the next preceding section, a Resident Magistrate, if the Governor so directs, shall also have and exercise the jurisdiction of the Resident Magistrate's Court in any other parish or parishes either generally or at such one or more stations therein as may from time to time be assigned to him by the Governor". Thus a breach in the rigid division of the island into restrictive jurisdictional areas was made, rendering it possible for the Chief Executive to deploy a smaller number of Resident Magistrates with greater efficiency and economy to the areas of greater need in the administration of justice".

In addition to his office as Judge of the Court of the parish to which he was assigned, the Resident Magistrate was also its Coroner and a justice of the peace for every parish in the island, but whereas his predecessor, the District Court Judge had a power[4] to preside in the

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4. A power which the "exalted character" of some District Court Judges led them to think was beneath their dignity "Let the District Court Judges do some Justices' work too. They have a lot of time. It is not beneath the dignity of trained lawyers to hear and determine petty cases civil and criminal", said Mr. Justice Ker CO137/518/384 Norman to Derby 16/9/1884 (Conveying views of the Judge). Mr. Ernest, a member of the local Royal Commission objected to their recommendation of Justices sitting with the Parochial Judges in summary cases CO137/505/127 Norman to Granville 24/4/1886.

Petty Sessions of his district, a duty was now imposed upon the Resident Magistrate "to attend as a Magistrate all Courts of Petty Sessions and when present at any such Court he shall be entitled to preside thereat; and he shall, when sitting alone ..... have all the powers and authority which are now, or which may hereafter be by Law committed to and exercisable by any two Justices of the Peace associated and sitting together".[5]

For eleven years responsibility for appointing the times and places at which not only the Petty Sessions but also the Resident Magistrates' Court were to be held rested, not on the Resident Magistrate, but on the justices of the peace of the respective parishes, subject to the approval of the Governor in Privy Council, and subject also to the single exception that in respect of the exercise by a Resident Magistrate of the criminal jurisdiction of his Court it was lawful for him to hold such Court at any time and place within his parish as he saw fit, due notice being given of the holding thereof.

In 1899 section 5 of Law 32 of that year effected a change of procedure which has in substance endured down to the present day. It provided that on or before the 31st of October in each year it would be the duty of every Resident Magistrate to fix the dates and stations at which the Petty Sessions and Resident Magistrates' Court in his parish would be held during the ensuing year. Such fixtures were

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5. In the absence of the R.M. two justices could of course hold a Petty Sessions, but see supra.

subject to the approval of the Governor in Privy Council who could lawfully alter the dates and stations so fixed by the Resident Magistrate, and, in the event of the failure of the Resident Magistrate to submit his fixtures within the prescribed time, the Governor in Privy Council was empowered to exercise the authority without reference to the Resident Magistrate.

Section 26 of the Resident Magistrates Law was, in the light of its antecedent history, of the utmost importance inasmuch as it was addressed to the correction of a very grave defect of the District Court System, namely, the total lack of supervision and control of the judges of the inferior courts to which their delays and arrearage of work were said to be attributable.[5A] The section now imposed a duty upon every Resident Magistrate within 30 days after every quarter to transmit to the Supreme Court a Report on the administration of his Court during the past quarter showing the working of his Court. The Proviso to the section, however, contained the necessary safeguard that "no Report or Returns shall be required of any Resident Magistrate as to any exercise of his judicial functions or discretion in any case which may come before him".[5B]

5A. CO137/525/127 Norman to Granville 24/4/1886 "If some such control had been in existence during past years, justice would have been far more efficiently administered in Jamaica than has been actually the case and the District Courts would not have been exposed to the obloquy which has fallen upon them".

5B. Upon a request by Hemming to RMs "to include in their quarterly returns to the Supreme Court statements showing the number of cases in which flogging was ordered and relative particulars" RMs objected "as the ordering of convicted persons to be flogged is an exercise of a judicial function or discretion His Excellency cannot direct or request me to make any report of the kind to the Supreme Court" vide S.26 of Law 43 of 1887. With this approach the Chief Justice and the Colonial Office agreed, the latter directing that the Reports be sent to the Colonial Secretary.

Jurisdiction (Civil)

Section 60 of the Principal Law was all-embracing. It recited that "Each Resident Magistrate shall preside in the Resident Magistrate's Court of the parish, and shall there to the amounts and to the extent and in the manner hereinafter provided, have ~~the~~ and exercise the civil and criminal jurisdiction hereinafter assigned to the said Court, and shall also have and exercise a Jurisdiction in all cases in Bankruptcy in which by Law 17 of 1877 jurisdiction was vested in a District Court, and in the recovery of all penalties or forfeitures to the Crown, and of fines in the nature of penalties, under all Statutes and Laws now or hereafter to be in force relating to the Public Revenue ..... and in all such causes, enquiries and matters, in which by any Law any special jurisdiction, duty or power is given to or imposed on any judge of a District Court, the Resident Magistrate shall within his parish have exercise and perform such jurisdiction duty or power ..... " Additionally the section provided that existing Laws should be read and construed as if throughout the said Laws the term "Resident Magistrate" were substituted for the term "District Court Judge" and Resident Magistrate's Court" for "District Court" and "Parish" for "District". Reporting on this section of the Law, the Attorney General commented that "its object is to vest in the Resident Magistrate all the powers hereto-

fore exercised by the District Court Judge"[6], and it may be particularly noticed that the Resident Magistrates' Courts, like its predecessor, acquired an Exchequer jurisdiction.

The various civil jurisdictions of the Court, as indicated by section 60, were detailed in subsequent sections of the Law. Thus all actions at law, whether arising from tort , from contract or from both where the debt or damage claimed did not exceed £50[7], whether in balance of account or otherwise were justiciable in the Court, provided that the defendant or one of the defendants dwelt or carried on business, or at some time within six calendar months next before the time of action brought, dwelt or carried on business, or the cause of action arose wholly or in part, within the local jurisdiction of the Court.[8] By memorandum in writing signed by them or their respective solicitors, parties could also confer jurisdiction upon any named Resident Magistrate's Court to hear and determine any action at common law irrespective of the amount of the debt or damage.

In land actions jurisdiction extended over the parish for which the Court was appointed and one mile beyond its boundaries.[9] Action for

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6. CO137/532/438 Norman to Holland 19/12/1887 (Forwarding H.H. Hocking's Report on Law 43 of 1887).
7. By the Judicature (Resident Magistrates) (Miscellaneous Provisions) Act of 1965 the jurisdiction of the R.M. Courts in contract and tort is now £300, Negligence £300, Land Actions : Mesne Profits £300, Re-entry £500, Equity £1,000, Probate and Administration £1,000.
8. Section 66.
9. S. 77.

recovery of land where the tenant unlawfully held over together with claims for rent or mesne profits not exceeding £50[10] or for the recovery of premises let at a rental not exceeding £25 per annum[11] where the rent was in arrear or the tenant held over or failed to observe any covenant or condition of the tenancy, were justiciable in the Court. Like the District Courts too, the Resident Magistrate's Court exercised a jurisdiction to hear and determine suits either at the instance of the Crown[12] or of any owner[13] for the recovery of land in the possession of a defendant without any right of possession thereto prescriptive or otherwise, and the Court could also adjudicate upon proceedings relating to disputed title to land, the annual value of which did not exceed £12.[14] Likewise suits as to disputed boundary of adjoining lands,[15] as to right of way or water or other easements,[16] and suits relating to disputes between the public and the occupier of lands as to rights or easements affecting such lands more within the competence of the Court to decide.[17]

The jurisdiction in equity of the Resident Magistrate's Court was in all respects identical with that of the District Courts' Suits in

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10. SS. 79 and 80.
11. S. 81.
12. S. 84.
13. S. 83.
14. Law 43 of 1887 S. 91.
15. S. 92.
16. S. 93.
17. S. 94.

administration, for the execution of trusts, actions for foreclosure, redemption, for enforcing sales, for specific performance and proceedings relating to the maintenance or advancement of infants or for the appointment or removal or substitution of trustees, where the amount of the estate, mortgage, purchase price, a trust property as the case may be, did not exceed £200 were within the statutory purview of the court.[18]

Under section 102 of the Resident Magistrates' Law the Court exercised a concurrent jurisdiction with the Supreme Court over the probate of wills and the administration of the personal estate, rights and credits of intestate deceased persons whenever the real and personal estate of the deceased did not exceed the sum or value of £200[19] and the deceased person last thereto entitled at the time of his death, or up to the time of his leaving the island if domiciled in Jamaica he died abroad, had his fixed place of abode within the parish in which the Court had jurisdiction.[20]

18. SS. 99 to 101 of Law 43 of 1887.
19. The amount was increased to £300 by Law 16 of 1891.
20. CO137/534/21 Norman to Holland 17/1/1888 (Conveying views of H.H. Hocking, A.G. for reform of the Law as to devolution of land on death. "As the Law now is real property on death of the owner intestate devolves by Act of law on the heir if by will it devolves at once on the devisee. In neither case does the administration or executor have anything to do with it. Before 1884 it was entirely beyond the jurisdiction of the Court of Probate. Accordingly before Law 13 of 1884 the Court had no jurisdiction to admit to probate a will dealing with real property only and probate granted of a will dealing with both real and personal property was operative only as regards the latter and left the rights of parties to realty wholly at large. Law 13 of 1884 simply altered the Law to this extent that it empowered Courts having probate jurisdiction to admit to probate wills dealing solely with landed property and made probate of a will dealing with either real

(footnote continued on next page)

Jurisdiction (Criminal)

For the purposes of the criminal law, the jurisdiction of every Resident Magistrate's Court extended to the parish for which the Court was appointed and one mile beyond its boundaries. Section 247 of Law 43 of 1887 specified the offences within the Court's jurisdiction. As in the case of the District Courts that jurisdiction was defined by reference to the island Acts 27VC32 relating to offences against the person, to 27VC33 relating to larceny and other similar offences and to 27VC34 relating to malicious injuries to property and also included (a) "the offences of forcible entry and detainer of land, whether at Common Law or by Statute, and all Common Law offences (not being felonies) unspecified in section 247 whether the punishment of such Common Law Offences had or had not been provided for by any Statute or Law) and (b) the offences over which by any Law jurisdiction was given to the District Courts.

In some respects, however, the criminal jurisdiction of the Resident Magistrate's Court was narrower than its predecessor's. Thus the Court could not adjudicate upon a charge of concealment of birth, or of shooting with intent, and whilst the District Courts were seized of a power

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(footnote 20 continued from previous page)

20. or real and personal property conclusive evidence of the contents and validity of the will as regards the real as well as personal property so long as it remained unrevoked".

to adjudicate upon offences relating to stealing or destroying valuable securities, titles to land, will or codicils, the Resident Magistrate's Court had no such power. Significantly too, Resident Magistrates' Courts were not allowed to hear and determine cases involving larcenies or embezzlements by public servants and as late as 1908 these Courts could not try the simplest cases of forgery.[21]

The penal powers of the Court were limited, like its predecessor's to one year's imprisonment with or without hard labour and a fine of £50.[22]

Procedure (Civil)

All actions or suits in the Resident Magistrates' Courts were commenced by lodging with the clerk of the courts[23] or any assistant clerk at the office of the clerk of the court or at any Court held within the parish, a plaint stating briefly the names and last known places of abode of the parties and naming a Post Office to which notices could be addressed to the plaintiff (to be called the plaintiff's address for service) and setting forth the nature of the claim made, or of the relief or remedy required in the action in a concise manner. Thereupon the Clerk was required to note upon the plaint the date of its receipt, assign to it a number according to the year in which it was lodged and the order in which it was entered, and issue, or cause to be issued under his hand

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21. CO137/664/272 Olivier to Crewe 15/6/1908 (Forwarding Report of H.I.C. Brown on Law 35 of 1908 "At the present time if a person forges an order for a shilling's worth of merchandise there is no power to try it in the R.M. Courts".
22. The power to award solitary confinement was apparently taken away.
23. Infra.

and seal of the Court a summons embodying the matter of the plaint and accompanied by the particulars of claim and stating the plaintiff's place of abode and address for service and bearing the number of the plaint in the margin, to be served upon the defendant within a prescribed time of the Return Day of the summons.

Sections 136 and 137 of the Resident Magistrates' Law gave Resident Magistrates' Courts a power which the District Courts did not enjoy. The latter, it had always been held, had no jurisdiction over persons living outside the island, although they may have been represented there by attorneys, in consequence of which actions for the most trivial causes had to be brought in the Supreme Court against absentees.[24] By the first section, which was an adaptation of sections 35 and 36 of the Civil Procedure Code (Law 39 of 1879), where an action was brought in any Resident Magistrates' Court against any person out of the jurisdiction of the Supreme Court, then if the defendant had in Jamaica an agent authorised to bring actions for him, the Resident Magistrate was empowered, upon application, to order service of the summons and subsequent proceedings in the suit to be made upon such agent. Additionally, it provided that even if the defendant had no known agent in Jamaica on whom service could be effected, provided the defendant carried on business in Jamaica, the Resident Magistrate could order service of the summons and of subsequent proceedings in the suit upon any servant or

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24. CO137/532/438 Norman to Holland 19/12/1887 (forwarding H.H. Hocking's Report on Law 43 of 1887).

agent in Jamaica engaged in carrying on for such defendant such estate or business. Resident Magistrates were expressly authorised in their discretion to direct advertisements to be made in any newspaper concerning such order or such service or any subsequent proceedings in the action, and service effected under the section was made equivalent in all respects to service upon the defendant himself.

The latter section (137) was an adaptation also of sections 32 to 34 of the Civil Procedure Code and gave the Resident Magistrates power to order service of summonses and of subsequent proceedings in any suit filed in the Court against any person residing out of the island in respect of actions arising within the jurisdiction. Every application for such an order had to be supported by evidence by affidavit or otherwise showing in what place or country the defendant was or probably may be found, and whether such defendant was a British subject or not, and the grounds upon which the application was made, and every order for such service had to prescribe the mode of service and limit a time after such service within which the defendant was to enter appearance, such time being dependent on the place or country where or within which the summons was to be served.

Another significant innovation in the Resident Magistrates' Law related to suits "in forma pauperis" and was introduced upon the recommendation of the local Royal Commissioners. Section 134 laid down a procedure whereby persons in such conditions of poverty as to be unable to defray the fees requisite to filing an action in the Court would not be

deprived of their legal rights by reason of such poverty. Upon an application of the prospective plaintiff supported by affidavits of poverty, by a certificate in verification thereof signed by a Justice of the Peace or Minister of Religion, and by a Certificate also of the Clerk of the Court to the effect that the applicant had a fair prima facie cause of action, it was lawful for the Resident Magistrate to order the necessary process to issue, if he saw fit, and the case would thereupon be issued, heard and disposed of without prepayment of fees.

Upon receipt of the summons it was open to the defendant to admit liability in writing, pay money into court, or in a case in which the defence of set-off, infancy, coverture on other like defence was raised coming under section 140 of the Law, to file notice of special defence in writing.[25]

Trials of civil actions were summary in form. If the parties appeared upon the day named in the summons, and subject to the power of the court, either to make orders granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, or to adjourn the hearing of any cause or matter,[26] the defendant was required to state his defence in answer to the plaint and, having so done, the Resident Magistrate was empowered to proceed in a summary way to try

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25. The Law was amended by Law 16 of 1891 empowering a Resident Magistrate to admit a special defence not complying with the procedural rules, subject to an adjournment of the case and to any order for costs which the justice of the circumstance may require.
26. SS.154.

the cause and to give judgment without further pleading or formal joinder of issue.

The rules in regard to jury trials in the intermediate judiciary were altered and brought into line with similar rules of the High Court of Judicature in England.[27] Thus by section 161, in actions of slander, libel, false imprisonment, seduction or breach of promise of marriage, parties were given a statutory right either upon application, or by leave of the judge, to a trial by jury. All other actions were tried and decided by the court without the intervention of a jury. As in the case of the District Courts, the jury consisted of five jurors and were taken by ballot from a panel of fourteen. Each party was allowed three peremptory challenges as well as challenges for good cause shown and the verdict was that of a majority.[28]

In circumstances in which satisfactory proof shall not have been given to him entitling the plaintiff or defendant to the judgment of the Court it was in the power of a Resident Magistrate to order a non-suit.[29] With consent of both parties references to arbitration could be made,[30] and a Resident Magistrate could at all times amend all defects or errors in any proceedings in his Court, whether there was anything in writing to amend by or not, and whether the defect or error was that of the party applying to amend or not, and all such amendments could be made with or

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27. Order 36. CO137/532/438 Norman to Holland 19/12/1887 (forwarding H.H.Hocking's Report on Law 43 of 1887).
28. The rules relating to trial by jury were altered by Law 12 of 1898 with respect to which see Chapter 18.
29. SS.167 of Law 43 of 1887.
30. Ibid. S.168.

without costs and upon such terms as to the Resident Magistrate was fit and all such amendments as were necessary for the purpose of determining the real question in controversy between the parties could be made.[31]

The provision of section 178 of the Resident Magistrates' Law was novel. Where in a case the Resident Magistrate had reserved his judgment and had before delivering the judgment ceased either temporarily or permanently to be the Resident Magistrate of the parish in which he had reserved such judgment, it was lawful for him at any time within two months after such reservation of judgment to lodge with the clerk of the Court his written judgment in the matter so reserved and such judgment was to be read by the Resident Magistrate of the Court at the first opportunity after it was so lodged. It was expressly provided also that the judgment so read should take effect in the same way that it would have taken effect if the Resident Magistrate by whom the judgment had been observed had himself delivered it on the day it was so read.

Judgment and Execution

Under section 35 of the Small Causes Law 1867, the District Court Judge, as we have seen, had a power of regulating the manner of satisfaction of a judgment not exceeding twenty pounds. This procedure was

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31. S. 176 of Law 43 of 1887.

abolished and under the Resident Magistrates' Law a judgment for the payment of any sum, irrespective of the amount, took effect forthwith and was, after the expiration of seven days of the date thereof, recoverable by execution against the goods and chattels of the judgment debt or upon the issue to the Bailiff of a writ of fieri facias or warrant of levy, as it is more familiarly called. By virtue of this writ the Bailiff was empowered to levy or cause to be levied by distress and sale of the goods and chattels of such party such sum of money as was sufficient to cover the debt and costs and costs of execution. As under the Small Causes Law, the wearing apparel, bed and bedding of the judgment debtor or of his family and the tools and implements of his trade to the value of five pounds were exempt from distraint. Where there were no goods or no sufficient goods to satisfy the judgment and costs, a Resident Magistrate could, after an enquiry made and report submitted by the Clerk of the Courts as to the judgment debtor's interest in any land, order the sale thereof, the proceeds being applied in satisfaction of the debt. This provision made upon the recommendation of the local Royal Commissioners replaced the cumbrous procedure under the District Courts system whereby the judgment was made an order of the Supreme Court.[32]

In addition to the writ of fieri facias and an order for sale of land a judgment creditor had the alternative remedy of a judgment summons

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32. SS.208-210 of Law 43 of 1877, later amended by section 6 of Law 39 of 1894.

for the recovery of his judgment, the procedure having been considerably shortened and simplified under the Resident Magistrates' Law.[33]

Procedure (Criminal)

Radical changes were wrought by the Resident Magistrates' Law and subsequent amendments thereto in the manner in which indictable offences were brought before, tried and disposed of, or committed to the Circuit Courts, by the Resident Magistrates.

We have seen that hitherto committal proceedings on indictable offences could be heard either by justices of the peace, by Clerks of Petty Sessions or by the District Court Judge. In the latter case committals would always necessarily be to the Circuit Courts, whilst in the two former cases the justices or the Clerk of Petty Sessions could, dependent upon the circumstances and gravity of the case, commit either to the Circuit or to the District court for trial. On and after the 1st of April 1888 committal proceedings were no longer conducted by justices of the peace, whilst the office of Clerk of Petty Sessions was abolished and his functions either in part disappeared or were merged into those of his successor, the Clerk of the Court. Where any person

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33. Alterations made upon the District Court system upon the recommendation of the local Royal Commissioners "I agree as to amending the law relating to judgment debtor summonses, more particularly as to the enquiry into the means of satisfying judgment following the substantive trial as a necessary continuation CO137/525/37 Clarke OAG to Granville 5/2/1886.

appeared or was brought before any justice of the peace charged with any indictable offence, it now became the duty, after such investigation as would justify him in remanding the accused person, to bind over or commit such person to appear before the Resident Magistrate within whose jurisdiction the offence was charged to have been committed, there to be dealt with according to Law.

Upon appearance of the accused person before the Resident Magistrate in Court or in Chambers, the Resident Magistrate was required, after such enquiry as seemed to him necessary in order to ascertain whether the offence charged was within his jurisdiction and could be adequately punished by him under his powers, to make an order, which should be endorsed on the information and signed by the Resident Magistrate, that the accused person be tried on a day named in the order, in the Resident Magistrate's Court, or that a preliminary examination be held with a view to a committal to the Circuit Court. In making an order pursuant to this power section 4 of Law 39 of 1894 empowered the Resident Magistrate to direct the presentation of an indictment for any offence or offences with which, as a result of his enquiry,[34] it should appear to the Resident Magistrate the accused ought to be charged, and to direct the Clerk of the Courts to add a count or counts.

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34. The scope, nature and effects of the enquiry which the Resident Magistrate was empowered to undertake have been the subject of considerable agitation in the Courts. See for example R.V. Junor et al Jamaica Law Reports (1933) pp.24-59 and the cases there cited.

Where there was a trial before the Resident Magistrate it commenced with the preferment of an indictment by the Clerk of the Court, and it was expressly provided that there should be no preliminary examination. The indictment was then read to the accused who was thereupon pleaded. If there was a plea of guilty, such plea was entered accordingly and sentence was pronounced. Where the plea was one of not guilty, the trial, except for good cause to the contrary, was proceeded with. At the close of the prosecution's case the accused was entitled to have summoned and examined such witnesses as he may wish to call and were capable of giving evidence material to his interest. Where the accused called no witnesses, the Clerk of the Court, or Counsel or Solicitor for the prosecution, was allowed to address the Court a second time in support of his case for the purpose of summing up the evidence against the accused, and the accused or his Counsel was allowed, when all the evidence was concluded, to sum up such evidence. At the conclusion of such trial the Resident Magistrate declared the guilt or innocence of the accused and pronounced sentence or discharged the accused accordingly.[35]

If it appeared to the Resident Magistrate that an accused person charged on indictment before him ought to have been charged with a more serious crime than that of which he was accused, and that that more serious crime was beyond his jurisdiction, or that having regard to the antecedents of the accused, or the nature and circumstances of the crime

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35. Law 32 of 1899 S.8.

of which he was accused, the case could not adequately be dealt with by him under his powers, section 252 of the Resident Magistrates' Law provided a remedy. By that section the Resident Magistrate was empowered at any stage of the trial prior to calling on the accused for his defence to vacate the order for trial of such accused person before him, and to proceed to treat and deal with the case as one for the Circuit Court. On the other hand, where the Resident Magistrate had begun to deal with a case as for the Circuit Court, and to take the deposition of the witnesses with a view to a committal for trial, if the crime with which the accused was charged was within his jurisdiction and if it appeared to him that such crime could be adequately punished by him, the Resident Magistrate could vacate the order for the preliminary examination and make an order, to be endorsed on the information and signed by the Resident Magistrate, that the accused be tried in the Resident Magistrates' Court.

Over such trials the Court exercised wide powers to amend or alter indictments at any stage so far as appeared necessary from the evidence or otherwise, or to direct a trial to be adjourned or recommenced from any point if such direction appeared proper in the interest either of the prosecution or of the accused person.

In addition to his jurisdiction over indictable offences, the criminal jurisdiction of the Resident Magistrate also included, as we have already seen, a power to sit as a petty sessional court, discharging

the criminal functions of two justices of the peace, as well as a particular jurisdiction, called a special statutory summary jurisdiction, to hear and determine special categories of offences not triable by justices.[36] In these latter cases, the course of the proceedings was, except where statutes creating the offences provided otherwise, identical with that obtaining in ordinary summary proceedings in petty sessions.

Two developments derived from this conjunction in the Resident Magistrate of petty sessional and special statutory summary jurisdiction, each perhaps unforeseen, but both of considerable impact upon the legal system, may here be noted. First, the imposition of a duty as distinct from the conferment of a power, upon Resident Magistrates to sit in petty sessions marked positively the beginning of the decline of that magisterial power by which legal administration had been for over two centuries largely paralysed. "Taking an offence at some of the provisions by which the Resident Magistrates' Court System was inaugurated and which they considered, reasonably or otherwise, to cast a slur on them",[36A] their magisterial appearances in petty sessions in the years after 1888

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36. e.g. Offences under the laws regulatory of vagrancy and obeah.

36A. CO137/644/26 Swettenham to Lyttleton 19/1/1905 (forwarding report of 1898 by W.W.Fisher, Resident Magistrate Manchester). "I do myself all the criminal work of the parish including the sole conduct of Petty Sessions for the lay magistrates, of whom there is a great number, never sit alone without me, and very rarely with me".

whether with or without the Resident Magistrates grew less and less. Perhaps the final act of their dethronement occurred in 1905. In that year, the Custos of St. Ann, Mr. Cox, affecting a supervisory power over the Clerk of the Court of his parish, informed him that "in all matters concerning the Commission of the Peace you hold the succession of the Clerks of Petty Sessions and have to do with Justices of the Peace and with no-one but Justices of the Peace. In this character you are subject to my directions as your superior officer."[36B] This assumption the Clerk utterly repudiated and his action was upheld by the Attorney General who advised that "the Custos or any other Justice of the Peace in a Court of Petty Sessions can, while the Court is sitting, give directions to the Clerk concerning the business in hand and before the Court, but he cannot when the Court is over give orders and directions about matters of detail in connection with his duties to the Clerk of the Courts, whose immediate superior is the Resident Magistrate".[36B]

The second development related to the procedure by which trials of summary offences were conducted. The forms by which proceedings in petty sessions and in matters reserved for the special summary jurisdiction of the Resident Magistrate were initiated, were identical. The

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36B. CO537/645/316 Swettenham to Lyttleton 23/6/1905 (forwarding correspondence on the matter including the opinion of Attorney General H.R.P. Schooles). In the Colonial Office it was even doubted whether the Custos and Justices had the power which Schooles in the first part of his opinion quoted above considered them to have.

practice developed of opening the Court both as a Resident Magistrate's Court and as a Court of Petty Sessions. The mode of trial from plea to verdict were, as we have seen, usually similar. Despite these substantial similarities of forms, procedure and practice, a Resident Magistrate could not lawfully hear together two or more offences, one or more of which were petty sessional matters, and the others, matters within his exclusive summary jurisdiction, even although all the charges arose out of one set of circumstances and the accused parties had, with a view to the saving of the time of the court and of expense and without prejudice to the interest of justice, consented to a joint trial.[36C] Moreover appeals from petty sessions lay to the Circuit Court, whilst appeals from special statutory summary cases were carried to the Supreme Court as a Court of Appeal and the provisions regulatory of the procedures incidental to these appeals were different. Above all this, however, was the fact that some statutory provisions creating summary jurisdiction were not free from obscurity.[36D] Whether therefore in a given set of circumstances a Resident Magistrate exercised his own peculiar jurisdiction, or that common to himself and justices of the peace, or whether he was justified in hearing together a number of separate summary offences, were matters of great consequence for purposes of

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36C. See R.V.Motta 1920 Clark's (Jamaica) Reports p.69. for a modern example.

36D. See R.V.Rickerby (1941) 4JLR.p.4: Smart v De Cordova (1941) 4JLR p.46, and Hart v Black (1956) 7JLR p.56.

appeal, and gave rise in due course to a rush of bewildering cases. Thus by watering the fee crop of lawyers, by delaying or denying justice, the array of jurisdictions with which the Resident Magistrate has been invested, each in its consequences providing a trap for the unwary litigant, can hardly be described as creditable to the legal system.

Appeals (Civil)

An appeal in a civil cause or matter from the Resident Magistrates' Court to the Supreme Court in its appellate capacity lay in the same circumstances as they did in the case of the District Court, that is to say, an appeal lay from its judgment, decree, or order upon any point of law, or upon the admission or rejection of evidence or upon the question of the judgment, decree or order having been founded upon legal evidence or legal presumption or upon the question of the insufficiency of the facts formed to support the judgment, decree or order. No appeal however lay upon the finding of a Resident Magistrate upon questions of conflicting evidence, nor from any judgment, decree or order, if before the decision of the Resident Magistrate was pronounced, both parties agreed in writing that the decision should be final. Likewise there was no appeal from any decision of the Resident Magistrate at Chambers, unless there would have been a right of appeal if the decision had been given in Court, or unless the Resident Magistrate gave leave to appeal.[36E]

36E. No appeal also was allowed from the decision of any question as to the value of any real or personal property for the purpose of determining the question of the jurisdiction of the Court. S.237 of Law 43 of 1887.

In its adjudication upon the appeal, the Court of Appeal could either affirm, reverse or amend the judgment, decree or order of the Resident Magistrate or order a non-suit to be entered, or order the judgment, decree, or order to be entered for either party as the case required, or remit the cause to the Resident Magistrates' Court with instructions, or for re-hearing generally, and could also make such order as to costs in the Resident Magistrates' Court and as to costs of the appeal as it considered fit. No judgment, decree or order of a Resident Magistrates' Court, however, could be altered or reversed or re-mitted where the effect of the judgment was to do substantial justice between the parties to the cause, nor was an appeal allowable on the ground of improper admission or rejection of evidence, or, in case the action had been tried with a jury, on the ground of misdirection because the verdict of the jury was not taken on a question which the Resident Magistrate was not at the trial asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage had been thereby occasioned in the trial; and if it appeared to the Court that such wrong or miscarriage affected part only of the matter in controversy, or some or one only of the parties, the Court was empowered to give final judgment as to part thereof, or some or one only of the parties and allow the appeal as to the other part only, or as to the other party or parties.[37]

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37. S.235 of Law 43 of 1887.

Resident Magistrates were also empowered to state a case for the opinion of the Court of Appeal, and any appeal from the judgment of a Resident Magistrate in exercise of his civil jurisdiction could take the form of a case agreed upon by both parties, or their Solicitors or Agents.[38]

Under section 240 of the Resident Magistrates' Law as amended by section 15 of Law 34 of 1888 the procedural rules to be followed in exercise of the right of appeal were laid down, among which rules was the requirement that Resident Magistrates should, after a party had lodged his appeal and entered into security for the due prosecution of the appeal and for the payment of costs, draw up a statement of the reasons for the judgment, decree or order in the case appealed from.[39] The right of a party to appeal received additional safeguards under Law 39 of 1894, the Resident Magistrates' Law Further Amendment Law. Section 8 thereof provided that the right of appeal was to be liberally construed in favour of such right, and in case any of the formalities prescribed had been

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38. SS.238 and 242 of Law 43 of 1887.
39. W.W.Fisher R.M. St. Elizabeth, wrote in 1892 thus:
"In Matara (Ceylon) ten years ago, I used to do as much work in a week as I do here in a month on the bench ..... In Ceylon and Cyprus written reasons for judgment must be formulated for every judgment given, while in Jamaica, it is not customary or necessary (though I usually do it myself from habit and because I think it right) to give any reasons for a judgment until some party gives notice of appeal - an absurd system from the appellant's point of view - for he is put to the expense of depositing some £12 (part of which is forfeited if he drops his appeal on reading the reasons) before he knows what he is appealing against CO137/644/26 Swettenham to Lyttleton 19/1/1905.

inadvertently or from ignorance or necessity omitted to be observed, it was lawful for the appellate Court with or without terms to admit the appellant to impeach the judgment, order, or proceeding appealed from.

Appeals (Criminal)

Criminal appeals from the Resident Magistrates' Courts were originally governed by section 270 of the Resident Magistrates' Law. That section allowed appeals for matters of law only and not for matters of fact and every such appeal had to be lodged with the Clerk of the Court within seven days of the judgment appealed from.

By reason of the provisions of section 60 of Law 43 of 1887, whose wide ambit has already been noticed,[40] the powers under Law 25 of 1872, a Law for the further Amendment of the Administration of the Criminal Law, of the former District Court Judge to state a case for the opinion of the Supreme Court was extended to the Resident Magistrate, and all the powers of the Supreme Court over the determination of the questions of law so stated by a District Court Judge[41] applied in like manner to a case reserved for their opinion by a Resident Magistrate.

No provisions for the grant of bail to an appellant who had appealed under section 270 of the Resident Magistrates' Law existed until 1891. Section 8 of Law 16 of that year authorised Resident Magistrates in

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40. See Supra.
41. See Chapter 14.

appropriate cases to grant bail to appellants with sureties pending the hearing and results of the appeal.

In 1899 the Chief Justice[42] called attention to the fact that whereas there were elaborate provisions as to appeals from Petty Sessions, appeals in criminal cases under the Resident Magistrates' Law were not adequately regulated, and he drafted the Bill for the Law which later became Law 7 of 1900 "The Criminal Appeal Law". The provisions of section 270 of Law 43 of 1887 and of section 8 of Law 16 of 1891, though repealed, were substantially re-enacted, and in giving effect to the interpretation put by the Supreme Court upon the former section, section 2 of the new Law declared that the right of appeal extended not only to the judgment of a Resident Magistrate in any case tried upon indictment, but also upon information in virtue of a special statutory summary jurisdiction.

Section 3 of Law 7 of 1900 allowed an appeal from the judgment of a Resident Magistrate in a case tried by him on indictment to "any person", a term which was interpreted to give a right of appeal to the Crown also.[43] The period in which to appeal was enlarged from seven to fourteen days and notice of appeal had to be signed by the appellant or by his Solicitor. Within the period of fourteen days the appellant was required to deliver to the Clerk of the Court a statement of the grounds of his appeal, and not later than fourteen days after receipt of the notice and grounds of

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42. Sir Fielding Clarke.
43. As interpreted this provision fell under the censure of Mr. Justice Lumb. CO137/620/406 Hemming to Chamberlain 5/7/1901.

his appeal, and not later than fourteen days after receipt of the notice and grounds of appeal the Clerk of the Court was required to forward to the Registrar of the Supreme Court the record of the case together with the notes of evidence or a certified copy thereof and all documents which had been received as evidence or certified copies of the same.

In exercise of its appellate powers the Court of Appeal could amend all defects and errors in any proceeding in a case tried by a Resident Magistrate on indictment or information in virtue of a special statutory summary jurisdiction, whether there was anything in writing to amend by or not and whether the defect or error was that of the party applying to amend or not and all such amendments could be made as the Court of Appeal saw fit.

No appeal was allowed for any defect or error in form or substance appearing in any indictment or information on which there had been a conviction unless the point was raised at the trial or the Court was of opinion that such error or defect had caused or may have caused injustice to the person.[44] Similarly, no judgment order or conviction of a Resident Magistrate could be reversed or quashed on appeal for an error or mistake in the form or substance of such judgment order or conviction unless the point had been raised at the trial, or the court was of opinion that the error or mistake had caused or may have caused injustice to the party

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44. S.10.

against whom such judgment order or conviction had been given or made. Finally the Court of Appeal could dismiss the appeal, or allow it and quash the conviction, or allow the appeal and order a new trial,[45] but no appeal was allowable on any ground not stated in the grounds of appeal unless the same had been amended by order of the Supreme Court. Where a new trial was ordered, the case could not be heard before the Resident Magistrate who presided at the first trial, nor, in the event of a conviction at the second trial, could a greater punishment be inflicted than was awarded at the first trial, and any imprisonment undergone under the first conviction was to be reckoned as part of the imprisonment, if any, inflicted under the second conviction.

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45. This provision had a rather mixed reception. A comment in the Colonial Office read "I do not altogether approve of the proviso for protecting persons charged at "New trials" by not allowing him to receive on conviction at the second trial a greater punishment than was inflicted at the first. It is a distinct inducement on the part of every convicted person to appeal" CO137/610/168 Hemming to Chamberlain 24/4/1900 (Colonial Office Comment upon Report of the Attorney General upon Law 7 of 1900). On the other hand Mr. Justice Lumb criticised the Criminal Appeal Law for (1) imposing hardship on an appellant by requiring his presence at the appeal (2) allowing New Trials, or permitting a man to be tried twice for the same offence and (3) giving the Crown a right of appeal.

Judicial Qualifications, Appointments and Salaries

No person could be appointed a Resident Magistrate unless he was a member of the English or Irish Bar, or of the Faculty of Advocates of Scotland, or a Solicitor of the Supreme Court of Judicature of England, Scotland, Ireland or Jamaica, or a writer to the Signet of Scotland. There was no requirement as to number of years' standing or practice. For remunerations the Resident Magistrates' Law prescribed salaries of not less than £500 and not more than £800 per annum together with travelling allowances of £100 per annum.

Power of appointment to the intermediate Bench was vested by law in the Governor. The rule of practice of the Crown however was that "when in a Crown Colony an Ordinance prescribed that an appointment shall be made by the Governor, the Secretary of State selects the person to be appointed or confirms the selection made by the Governor in accordance with the 4th Chapter of the Colonial Regulations as in the case of appointments made in pursuance of a general enactment".[46] Contrary therefore to the letter of the local enactment all firm appointments to the Resident Magistracy were made by the Crown, but many nominees were recommended by the Chief Executive.

Every Resident Magistrate was required to reside within the parish

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46. Lord Derby's Despatch of 28/3/1884 Vide CO 137/532/392 Norman to Holland 14/11/1887.

to which he was assigned and was not allowed to practise at the Bar or to be directly or indirectly concerned as a Solicitor or in mercantile pursuits.[47]

Other functionaries "It was an essential feature of the proposals of the local Royal Commission and of the Government that there should be one clerical staff for all the courts of the parish".[48] In the Clerk of the Court the principal legal and executive officer of the Resident Magistrates' Court this objective was achieved. His office combined the surviving functions of the Clerk of the District Court, of the Clerk of Petty Sessions as well as of the Clerk of the Circuit Court, all of which offices were abolished on the coming into operation of the Resident Magistrates' Court.

Under the Resident Magistrates' Law the Clerk of the Court was required to be of the same qualifications as the Resident Magistrate,[49]

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47. The original draft of the Resident Magistrates' Law had contained a provision preventing Resident Magistrates and their Clerks from owning any land or leasing any land in the parish other than for a residence. This however was removed. "The removal may not be wise but it is difficult for gentlemen to get grass for their horses unless they have a good tract of land and there can be no harm in raising cattle or sheep". CO137/532/438 Norman to Holland 19/12/1887 (Forwarding Report of H.H.Hocking, A.G. on Law 43 of 1887.
48. CO137/531 Hocking to Norman 1/6/1887 (Report on Law 17 of 1887).
49. S.18 of Law 43 of 1887.

but in 1891 Law 16 of that year provided that a person who had served for ten years as an assistant clerk and had obtained from the Judges of the Supreme Court a certificate that he was possessed of a knowledge of Criminal Law and Procedure and the Rules of Evidence and the principles of Civil Law equal to that required of an articled Clerk presenting himself for examination prior to being admitted as a Solicitor, was eligible for appointment as a Clerk of the Court.

Custodian of the records of his Court, the Clerk of the Court had and exercised all the functions which by Law had devolved upon the Clerk of Petty Sessions save and except that he had no authority to take preliminary examinations or depositions on charges or informations for indictable offences or to commit for trial. He was also clerk to the Circuit Court held in his parish except in the case of the Circuit Court held in Kingston in which case the Registrar of the Supreme Court was the clerk thereof. He conducted the prosecutions in indictable and summary cases, but it was not his duty, unless called upon to do so in any particular case by the Resident Magistrate, to appear in and prosecute in preliminary examinations or to marshal the evidence therein.[50] With the aid of his assistant clerk or clerks he issued all summonses, warrants, precepts and writs of execution and registered all orders and judgments of the Court. Like his predecessor, the Clerk of the District Court, he was in charge of all court fees and fines paid into Court and of all monies paid into or out of his office and was required to keep books of

50. Section 3 of Law 34 of 1888 amending section 32 of Law 43 of 1887.

account and to submit to such periodic checks to such person as the Governor appointed for the purpose.

The Bailiff The irregularities of the Bailiffs of the District Courts, of which instances have been cited,[51] had constituted one of the principal defects in the working of the District Courts to the remedying of which the local Royal Commissioners had addressed their particular attention.

Sections 33 to 51 of Law 43 of 1887 implemented their recommendations. As in the case of the District Courts, there was, under the Resident Magistrates' Law, only one Bailiff to each Court. He held his appointment from the Governor. By writing under his hand and subject to the approval of the Governor he appointed a sufficient number of able and fit persons to assist him in the performance of his duties, and in granting his approval for the appointment of any Assistant Bailiff, the Law enjoined upon the Governor the duty to satisfy himself as to the position probity and character of the appointee and also as to the terms of the remuneration agreed upon which were not to be less than half the amount of Bailiff's fees payable for the service of process.

Assistant Bailiffs were to be stationed at the various Court stations in the parish for the purpose of serving and executing in their respective areas the processes issued to them from the Court. Power was given to

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51. CO137/525/37 Clarke O.A.G. to Granville 5/2/1886. "That the Bailiff system is in need of urgent reform is clear and the arrangements proposed for checking their books in future are much what they should be".

the Governor to appoint an additional Bailiff for any Resident Magistrates' Court, and where there was remissness on the part of any Bailiff in the execution of any writ in his hand, it was lawful for the Resident Magistrate, on the application of the party aggrieved, to appoint a Special Bailiff on such terms as may seem fit to him to execute such writ.

It was the duty of the Bailiff with the aid of his Assistants to serve all summonses and orders entrusted to him for service and to execute all warrants, precepts and writs issued to him. He kept full account in writing of all monies received by him, and was required to issue from prescribed counter-foiled receipt books receipts for all monies received by him.[52] Responsibility for periodically checking and examining his books and returns was transferred from the Clerk to the Resident Magistrate[53] and new disciplinary provisions were incorporated giving the Resident Magistrate extensive powers of investigation into misconduct, neglect of duty, non-accounting, extortion and other acts of dereliction on the part of officers of the Court, including the Bailiff and his assistants, and of imposing sanctions.[54] Further, in order to secure men of better character and integrity for the important office of Bailiff the salaries attached were increased to a sum not exceeding £100 per annum.[55]

52. S. 43.
53. S. 44.
54. S. 51.
55. S. 48. Despite all these provisions, however, there continued to be for sometime occasional acts of defalcation.

Critique

Costliness of the District Courts, magisterial jealousy at their jurisdictional encroachments and expansion, non-appointment of Jamaicans to the judicial bench, the failings of certain District Court Judges and their delays and inefficiency had constituted in the 1880's the counts of the political indictment against the intermediate judicial system, and the local Royal Commission had indeed found that "the inferior courts of Jamaica were unnecessarily costly and impaired in their working by grave defects".[56]

Among remedial measures proposed were the merger of the two systems of inferior courts under a staff of ten Parochial Judges and the provision of one clerical staff for all the courts of each parish. Consistent with these recommendations the Executive Government had in 1886, as we have seen, introduced into the Council the Parochial Courts Bill, a legislative plan by which, as the undermentioned Comparative Table indicates, the primary problem of the costliness of the system would, consistent with the requirements of efficiency, have been met with a saving of near £5,000.

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56. CO137/525/37 Clarke O.A.G. to Granvile 5/2/1886.

Comparative Costs of Establishments

Cost of District Court System Estimates 1886-7	£	Cost of System proposed by Government	£
Circuit Court Clerks	470	Parochial Judges	
5 District Court Judges	5,000	One at £900	900
District Court Clerks	2,660	Three at £800	2,400
Allowances for Clerical Assistance.	266	Six at £700	4,200
		Allowance for Kq. Judge	100
Assistant Clerks	1,092/10/0	Travelling Allowances	1,210
Judges Travelling Allowances.	1,095	Four Clerks at £300	1,200
		Six Clerks at £250	1,500
District Court Clerks	845/10/0	Fourteen Asst. Clerks	1,600
Stipendiary Magistrates.	2,432/10/0	Clerical Assistance	500
		Travelling Allowances to Clerks.	1,210
Travelling Allowances.	860	Estimated Pensions	1,283
House Allowance.	400	Coroner's Deputies	300
Petty Session Clerks	3,850	Saving	4,926/10/0
Travelling Allowances	2,058		
Coroners' Deputies	300		
	£21,329/10/0		£21,329/10/0

57. CO137/531.

Wisdom, however, did not entirely prevail in the Chambers of the Legislature, and the measure which emerged as Law 43 of 1887 and its consequences were to prove the grave unwisdom of permitting a matter so important to all interests in the community as the legal system to become immersed in the strife of partisan politics.

Having failed to accomplish the absurd scheme "of abolishing all paid judges of inferior courts leaving all the judicial work to be divided between the Supreme Court and the justices of the peace with an intended greatly enlarged criminal and civil jurisdiction"[58] elected members were obliged to frame the ultimate measure in a manner which fulfilled, or rather appeared to fulfil, to a degree the pledges of their hustings.

In the organisation of the Resident Magistrates' Courts, in the consequential high cost of the system and the resultant impact upon the problem of recruitment of judges, in the very style by which the judges of the Courts were to be known down to this day the political circumstances of the enactment of Law 43 of 1887 can be traced.

(i) The organisation of the Resident Magistrates' Court.

From the Attorney General it was learned that "the Government had proposed to combine some of the smaller parishes but at the instance of the elected members, however, it was agreed to provide a Resident Magis-

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58. CO137/531 Hocking to Norman 1/6/1887 (His Report on Law 18 of 1887).

trate for each parish except in Kingston and St. Andrew".[59] One effect of this departure from the plan of the Government was that the contemplated saving was wiped away and the aim of achieving at once an efficient and economical intermediate judicial system was frustrated.

On the 17th of April 1888 the Governor forwarded to the Secretary of State the following comparative statement of the cost of the previous system of District Courts and Courts of Petty Sessions and of the new system of Resident Magistrate Courts.

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59. CO137/531 Hocking to Norman 1/6/1887.

Resident Magistrates' Court		District Courts	
Resident Magistrates		**District Court Judges**	
2 at £800	£1,600	2 at £1,100	£2,200
2 at £750	1,500	2 at £1,000	£2,000
5 at £700	3,500	1 at £800	800
1 at £650	650	**Travelling Allowances**	
2 at £600	1,200	3 at £225	675
1 at £500	500	1 at £240	240
Travelling Allowances		1 at £180	180
11 at £100	1,100	**Clerks**	
2 at £80	160	2 at £500	1,000
Clerks		2 at £400 to £500	960
2 at £350 to £400	700	1 at £400	400
1 at £350 + £150 allowance	500	1 at £300	300
2 at £350 + £10 allow.	720	**Clerical Assistance**	266
5 at £350	1,750	**Travelling Allowance**	
3 at £300 to £350	900	3 at £187-10-0	562-10-0
Travelling Allowance		1 at £175	175
11 at £100	1,100	1 at £108	108
2 at £80	160	**Asst. Clerks**	
Asst. Clerks		1 at £150 to £200	200
3 at £200	600	2 at £120 to £150	300
3 at £150 to £200	450	6 at £80 to £100	595
6 at £120 to £200	720	**Bailiffs**	
1 at £80 to £200	80	7 at £60	420
2 at £100 to £120	200	4 at £50 to £100	200
3 at £80 to £120	240	**Stipendiary Magistrates**	3,697-10-0
Bailiffs		**Petty Sessions Clerks**	3,850
13 at £60	780	**Travelling Allowance**	2,058
1 at £50	50	**Circuit Courts**	
Contingencies	600	**Clerks**	270
Circuit Courts		**Criers**	110
Criers Salaries	150		
Stipendiary Justices Kgn	450	**Inquests**	350
Saving	1,757		
	£22,117		£22,117

The Governor then observed "I am not certain that there may not arise a necessity for some further outlay for travelling expenses and contingencies beyond the £600 provided but I think it may safely be assumed that there will be an eventual saving under the new system of at least £1,000 a year".[60] In short the District Court System which had been abolished on the ground of expense had been replaced by a system which had hardly cost less.[61]

Until re-organised in 1898, the new system of intermediate Courts was wasteful of man-power, encouraged unnecessary expense and created or tended to create an excessive number of court stations. From the undermentioned Table the want of occupation of many Resident Magistrates seem clear.

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60. CO137/535/141 Norman to Knutsford 17/4/1888.
61. In fact when in 1888 a R.M. was appointed for St. Andrew and in 1891 a Supernumary R.M. was appointed the system had become more expensive.

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Summary of Attendance at Courts of Resident Magistrates and number of cases listed - September Quarter 1897

Parish	No. of Days	No. of cases listed R.M. Criminal	R.M. Civil	Summary	Total	No. of Courts Each Month	Bankruptcy Cases in 12 mths.
Kingston	64	107	1106	93	1306	Daily	9
" Asst. RM	72	-	-	1121	-	"	-
St. Andrews	40	40	225	434	699	24	-
St. Thomas	42	76	171	157	404	10	5
Portland	33	121	192	408	721	11	3
St. Mary	49	89	453	661	1203	13	10
St. Ann	35	84	338	374	796	22	-
Trelawney	35	86	174	309	569	10	2
St. James	55	208	191	218	617	19	1
Hanover	32	89	184	191	464	11	1
Westmoreland	62	147	441	243	831	10	3
St. Elizabeth	43	196	206	515	919	14	4
Manchester	47	86	109	196	391	17	1
Clarendon	38	139	130	311	580	12	1
St. Catherine	46	150	239	479	868	18	-

62. CO137/587 Report of Blake's Committee.

In 1892 the pen of W.W.Fisher, Resident Magistrate for Manchester, depicted the state of blissful idleness in which most Resident Magistrates, particularly those in remote country parishes, passed their remunerated working days."In Matara, ten years ago I used to do as much work in a week as I do here in a month on the bench ..... Manchester, my only parish, is from quarter to quarter about half way down the list of fourteen parishes (in size and population, from 6 to 9). From month to month I do an average day's work of a little over one hour. I do not scamp my work. I have been censured by the Supreme Court for the length of my judgments ..... 16 Resident Magistrates are paid (with their travelling) £12,230 and their Clerks £5,890, that is £18,210 for doing one hour's work a day. Men and money are being wasted in Jamaica. In my opinion the judicial divisions are too small, they contain too many courts and there is of necessity too much travelling".[63]

Whereas the District Court System had been contracted to the point at which the District Court areas were too large, the parochial divisions upon which the Resident Magistrates' Court System was based were so numerous that each division was too small, and rigid adherence to the principle that the boundaries of the parishes constituted the limits of the jurisdiction of each court led to some curious situations. Thus where the boundaries of the parishes St. James Hanover and Westmoreland converged in the Upper Valley of the Great River, there were three Courts or out-stations within a few miles of one another. "The Resident

63. CO137/644/26 Swettenham to Lyttleton 19/1/1905 (Enclosing Fisher's Report of 1898).

Magistrate of Hanover whose Court is at Miles Town has, to get there, to travel 24 miles over a bad road, the Resident Magistrate for Westmoreland and whose Court is at Bethel Town has to travel 29 miles while the Resident Magistrate for St. James, who could easily perform the whole of the work now requiring the services of three Resident Magistrates, has only to travel 10 miles by train to his court at Montpelier. Again the village of Spalding in the parish of Clarendon is within two miles of Christiana in the parish of Manchester where there is a good Court House but the people resident at Spaldings have to go 24 miles to Chapelton to obtain process and 10 miles to Frankfield to get jurisdiction instead of two miles to Christiana".[64]

The multiplicity of court-stations, bred by the organisation of the judicial system upon strict parochial lines, led to results which were noticed by one Resident Magistrate. "A system which by multiplying courts to an absurd extent carries them to the very doors of the people instead of compelling the people to come to them gives every facility for the encouragement of litigation. How such a system ever came to be adopted I cannot conceive, except on the supposition that the English County Court System has been servilely adopted. It fosters litigation which in my opinion would in no wise be hampered by its discontinuance. Many a dishonest defendant will take his chance of winning his case when the court is held at his door who will confess judgment when he considers

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64. CO137/587 Report by Blake's Committee of 1898.

the risk of having to pay plaintiff's enhanced costs of proving his case 10 or 20 miles away".[65]

In the tenth year of the existence of the Resident Magistrates' Courts economic conditions of the colony obliged[66] a close examination of the public expenditure by which the public services were supported. The Governor Sir Henry Blake's Committee reported in February 1898, but within a few months of that report, Blake's successor, Hemming, established a Committee of elected and official members "to make a thorough investigation into the working and expenditure of the several Public Departments with a view to their ascertaining and recommending what further reductions could be made without unduly impairing the efficiency of the Departments".[67]

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65. CO137/644/26 Swettenham to Lyttleton 19/1/1905 (Enclosure of Fisher's Report).
66. CO137/579 (Conf) Blake to Chamberlain 30/1/1897 "Revenue has fallen off in every branch of Customs, Excise and direct taxes. Unless financial depression in U.S.A. is relieved or the price of sugar and the demand for rum in the English markets is improved I see no immediate prospect of increase of revenue from present sources ..... Sugar has sunk to a price that has rendered its cultivation unremunerative. CO137/558 (Conf) Hemming to Chamberlain 14/3/1898 "The position of affairs is altogether unsatisfactory - almost alarming. The elected members are chiefly to blame for the heavy deficiency which now exists by their action in refusing to support the Government in replacing the duties which were taken off in 1892".
67. CO137/592 Hemming to Chamberlain 18/7/1898.

The Report of this the Hemming's Committee on the intermediate judicial system and its parochial organisation called attention to the fact that "the existing parochial boundaries did not present the most convenient partition of the island for the purposes of the provincial courts of justice". "The ideal plan would be to divide the island into districts and, having regard to the facilities in travelling by road and rail, to assign to each Resident Magistrate as many districts as might be convenient. But unless the idea of local jurisdiction were abolished altogether, the limits of each district would have to be exactly ascertained in order that the officers issuing process should know whether a case were justiciable in the Court or not. Parish boundaries being well known are ideal though sometimes inconvenient. We do not think that other boundaries as the basis of jurisdiction could be easily or advantageously marked out. We think therefore that as at present there should be a Resident Magistrates' Court for each parish, though possibly one Clerk of the Court for two parishes, but the number of Resident Magistrates might be reduced as occasion offers, if some of the out-stations were discontinued and if the Resident Magistrates, instead of being appointed to the several parishes, were appointed for the island generally and particular courts allotted to each".[68] [69]

These recommendations, as we have already seen, were implemented

68. CO137/594/457 Hallowes A.O.G. to Chamberlain 20/X/1898 (Forwarding Report of the Hemming Committee).
69. Supra.

by sections 5 and 6 of Law 36 of 1898 pursuant to which the number of Resident Magistrates were gradually reduced,[70] their areas of jurisdiction ultimately conforming to a substantial degree to those of their predecessors, the eight District Court Judges of three decades earlier.

One other consequence of the early territorial organisation of the Resident Magistrates' Courts deserves mention because of its impact upon the important question of the recruitment of judges. The Executive Government had proposed ten Parochial Judges, four of whom were to have had districts comprising more than one parish with salaries ranging from £700 to £900 and travelling allowances ranging from £100 to £150, the whole amounting to £8,810. Elected members however provided for a Resident Magistrate for every parish except St. Andrew[71] with salaries from £500 to £800 and travelling allowances, the whole amounting to £10,210. The staff of judges was therefore more expensive while the salaries were smaller and therefore was less likely, at a time when "Jamaica was undoubtedly the most expensive colony in which an Englishman

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70. "The ordinary villager thinks it no hardship to walk 15 miles to market and an equal distance back again and he would go more lightly and easily to Court than to market" CO137/664/115 Swettenham to Lyttleton 22/3/1905. By 1905 the policy of reduction of RM's and combination of parishes was pursuing so extreme a course that Lyttleton wrote on 24/2/1905 "Looking to the areas of the two parishes (St. Elizabeth and Manchester) now in question, to the distances between the stations at which the courts of those parishes are held and to the list of Court Fixtures in the Jamaica Handbook it would appear impracticable for the work of the two parishes to be done by one RM unless the number of courts to be held is considerably reduced".

71. Supra.

could live",[72] to attract promising professional men from outside the island. As in the case therefore of the Chairman of Quarter Sessions, and to a lesser degree, of the District Court Judges, there was cause for gubernatorial regrets that "it has not always been the case with Englishmen sent out to the Resident Magistrates' Courts here that they have either maintained dignity or known their work".[73]

(ii) The Style "Resident Magistrate"

The obloquy which, justifiably or unjustifiably, had fallen upon the District Courts, had counselled the advisability of applying to the judicial incumbents of the re-modelled Courts a style or title which would not excite the animosity or ill-will of the influential, and especially, of the magisterial, classes. In the District Courts Bill of 1886 the judges had been named "Parochial Judges". "Parochial" however was not an accurate description of the jurisdictional divisions over which the judges would preside, for, pursuant to the terms of the Bill, those divisions would not have been co-terminous with the parishes. Further, it was not a felicitous expression inasmuch as "it tended to lower the dignity of the office, at any rate in the eyes of non-Jamaicans".[74] On

72. CO137/644 Swettenham to Lyttleton 19/1/1905 (forwarding Report of W.W.Fisher RM in which the observation is referred to).
73. CO137/674/520 Olivier to Crewe 24/11/1909.
74. CO137/531 Comment in the Colonial Office upon Hocking's Report on the Law 17 of 1887.

the other hand "Judge" was more becomingly descriptive of gentlemen who were required to be members of the English and Irish Bar and would preside over a Court of Record with extensive civil and criminal jurisdiction.

Neither "Parochial" nor "Judge", however, survived the anxieties of elected members, embarrassed by the failure of their electioneering commitments to wipe away the intermediate judicial system and to elevate the Honorary Justices to the number two position in the judicial hierarchy of the colony. After the defeat in the Council of their scheme "an informal conference (of all members of the Legislature) was held on the subject of the (District Courts) Bill and in deference to a very general wish on the part of the elected members an alteration was made in the title of the Judicial Officer and it was agreed that he should be styled the "Resident Magistrate".[75]

From between these very guarded lines of the Attorney General the motivations of the people's representatives can be discerned. Having failed to elevate the unpaid magistrates, the only alternative open to them was to submerge the distinctions between the two grades of judicial officers under the common description "Magistrate",[76] but as a judge of the Resident Magistrates' Court would be required to reside in his parish, whereas the justices of the peace were under no such obligation, the des-

75. CO137/531 Hocking to Norman 1/6/1887 (His Report on Law 17 of 1887).
76. "A less dignified title than judge" was the view in the Colonial Office of the title "Magistrate" CO137/531.

-cription "Resident" was additionally applied to the former.

Two other provisions of Law 43 of 1887 disclose the peculiar solicitude of elected members for the magisterial class at the expense of the judges of the Resident Magistrates' Courts. Section 60 contained the novel provision that "in the exercise of his Civil Jurisdiction the Resident Magistrate may call upon one or more of the Honorary Justices of the Parish to assist him in any particular matter, and thereupon such Honorary Justice or Justices shall have an equal Jurisdiction with the Resident Magistrate". Not less startling was the provision in section 61, which, as we have seen, gave the Justices of the Peace the power not only to fix the times and places for the holding of their own Court but of those of the Resident Magistrates as well, and which the Colonial Office considered "very objectionable"[77], save for the fact that the fixtures of the Justices were subject to the approval of the Governer.

The initial denigration of this professional body of intermediate judges paved the way for an unsuccessful attempt within the decade. In 1897 a directive was issued by Governor Blake to the Police Department to the effect that Resident Magistrates, like justices of the peace, should be addressed in Court as "Your Worship" and not "Your Honour" "there being practical disadvantages in fostering any impression in the minds of Resident Magistrates that their functions are merely judicial and that in hearing cases and pronouncing judgments their duties practically begin and end".[78]

77. CO137/531.
78. CO137/591 Hallowes AOG to Chief Justice 1898.

With this directive the Chief Justice and other members of the Supreme Court[79] expressed concurrence on the technical ground that "the practice of addressing County Court Judges in England in the style "Your Honour" is no authority for a similar practice with respect to the Resident Magistrates of Jamaica. The title of the County Court Judge was expressly secured to them by Royal Warrant dated the 4th of August 1884. Resident Magistrates are not therefore entitled to be addressed respectively as "Your Honour".

In defence of their injured status nine of the fifteen Resident Magistrates took concerted action. In their petition of the 26th of May 1898 to the Secretary of State they stressed that the term "Your Worship" was applicable to justices of the peace, to stipendiary magistrates or to a Mayor or Head of a Municipal Corporation and could not properly be applied to judges of a Court of Record such as they were. They recalled that District Court Judges to whose identical civil and criminal jurisdiction they had acceded had always been addressed in court as "Your Honour" and they contended that "to lower their status to that of a justice of the peace will have the effect of detracting from the dignity of the Resident Magistrates' Courts and of limiting the respect which is now paid to the Resident Magistrate by all classes in the colony".[80]

79. Supreme Court Judges from the earliest times down to the 1950's were addressed as "Your Honour". By a decision of the Chief Justice (and presumably of the Puisne Judge) the style of address was changed to "Your Lordship".

80. CO137/591/251 Hemming to Chamberlain 23/6/1898.

Two technical arguments buttressed the stand of the Resident Magistrates. Firstly, it was urged that they and they only could be seized of the matter of the style or manner in which they should be addressed in Court for "the Executive cannot lawfully interfere in the matter. According to the decision of the Court in England in Levy v. Moyston (10 CB 108) the opinion of the judge as to what constitutes an insult to him or a contempt of Court is conclusive and is not open to review by a Court of Appeal".[81] Secondly, there was no merit in the point raised by the judges of the Supreme Court with reference to the Royal Warrant of August 1884. "That document merely affected the title of the County Court Judges out of court, entitling them to the prefix "His Honour" before their respective names and fixing their rank and precedence after Knight Bachelors. From the inception of the Courts in England in 1846 down to 1884 County Court judges were addressed on the bench as "Your Honour". We do not contend and have never in any way contended that out of court the Resident Magistrate should have the title "His Honour" prefixed to his name, nor do we claim any rank or precedence. All that we ask for is that as we are constituted by law Judges of the Courts of Record exercising an extensive civil and criminal jurisdiction, while in the actual employment of our judicial functions on the Bench we are entitled as heretofore to be addressed respectively as "Your Honour" by those appearing before us".[82]

81. CO137/591/251 Hemming to Chamberlain 23/6/1898.
82. CO137/591/257 Hemming to Chamberlain 23/6/1968 (Forwarding Petition).

In August 1898 the new Governor received the decision of the Secretary of State: "The Memorialists[83] have shown good grounds for claiming to be addressed "Your Honour" by the Police and not "Your Worship". The instruction, rashly issued without reference to or prior consultation with the Resident Magistrates, and calculated wittingly or unwittingly to lower the dignity and status of the Courts through the person of their judicial incumbents, was withdrawn.

Judicial and Legal Personnel

The establishment of the Resident Magistrates' Court in many ways marked a significant break with the past.

Social conditions had been rapidly changing. Two decades earlier "the sugar plantations formed only a small part of the cultivated and pastured lands of the island and supported only one in twelve or one in fifteen of the population".[84] The economic ties that had constituted the basis and shaped the character of society were gradually being loosened, giving way to new social and economic relations. Amid these changes the black population was rising in the scale of life and the imperative necessity no longer existed to safeguard their particular interests by the exclusive presence on the bench of men "who had no family ties in the island and had not so long resided in it as to have created

83. E.Vickers, J.V.Leach, A.V.Kingdom, A.L.Vendryes, R.Egerton, S.L.Thornton, C.H.Beard, J.Musson, W.Clarke, were among signatories.

84. CO137/437/283 Grant to Buckingham and Chandos 7/12/1868.

local influences at variance with his position as a judge". Further, however much there was agitation against the District Courts, it could hardly be gainsaid that in their impartial administration of justice, "too fairly and impartial for many",[85] a tradition had been established which could not be lightly departed from.

Thus in June 1887 Norman importuned the Crown concerning "the propriety of nominating qualified Jamaican lawyers to a proportion of these situations".[86] The request signified also official recognition of local clamour for the placing of Jamaicans on the local bench, but five months later Norman tempered his earlier letter. "It will be advantageous that while some of the best qualified Jamaicans receive some of these appointments there should be an infusion of Barristers or other qualified lawyers from Home." I propose to make seven appointments".[87] To these requests the Crown acceded and the Jamaicanisation of the intermediate Judiciary began, accelerated no doubt by the low scale of salaries which could have no great appeal to men of outstanding promise at the English Bar.[88]

By 1892 two-thirds of the Resident Magistracy consisted of Jamaicans and thirteen years later Sir Sydney Olivier added a plea for the future of the island as a self-supporting organic community. "If you can (and

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85. CO137/518 Mr. Justice Ker.
86. CO137/531/183 Norman to Holland 14/6/1887.
87. CO137/532/392 Norman to Holland 14/11/1887.
88. CO137/644 W.W.Fisher RM. Manchester "The Resident Magistrate's pay is not too much for the cost of living and travelling in Jamaica is so exorbitant that no Magistrate could live decently on much less than he gets".

I am satisfied that in Jamaica you can) produce respectable and capable young men with ambition to rise to high responsible position on the Bench, it is with a little extra pay in the intermediate rank: otherwise you will tend towards an imported class of high officials and a rabble of incompetent backward clerks on petty salaries".[89]

Greater attention too was now being paid to the general as distinct from the mere professional suitability of applicants for judicial posts, and Norman, when asking for the despatch of "six or seven gentlemen fully qualified to hold the post of Resident Magistrate",[90] emphasized that "it was most important that these gentlemen should not only be qualified by legal knowledge but that by their character and habits they should be able to take a leading position in their respective parishes".[91]

Some observations by the Governor and the Colonial Office upon the antecedent history of candidates for judicial offices disclose the new sense of care and diligence with which the task of selection was being approached. W.B.Coke, Custos of St. Elizabeth, had asked Norman to appoint his nephew. Although Mr. R.W.Coke was a Bechelor of Arts, a Bechelor of Law, a "Cambridge Boy", called to the Bar in 1885 and then practising in Liverpool, Norman did not propose to recommend "anyone whom I do not know".[92] Of the character and reputation of Mr. E.Vickers, Bachelor of Arts, Bachelor of Civil Laws, scion of a highly respected

89. CO137/644/183 Swettenham to Lyttleton 18/4/1905 (Note by Olivier on Despatch).
90. CO137/531/297 Norman to Holland 16/9/1887.
91. CO137/532/392 Norman to Holland 14/11/1887.
92. CO137/531/297 Norman to Holland 16/9/1887.

Jamaica family, brother of the late Custos of Westmoreland and one whose nomination would give great satisfaction to the island, Norman had had no means of knowing and could only support his application "if he is otherwise suited".[93] "The personal and official qualities of Mr. J.R. Reece" won the speedy imperial nod, whilst "the humanity, zeal, justice, independence and clearness of head of Mr. Vickers",[94] of whom the Colonial Office had had more accurate knowledge than the Governor, secured for Jamaica a Resident Magistrate who was among the first to be translated to, and to distinguish himself in, the Puisne Judgeship. On the other hand the claims of C.P.Huggins, Clerk of the Court, St. Elizabeth, to promotion as Resident Magistrate were turned down, although "a Westminster Boy, an English Barrister and senior to those other gentlemen".[95] "With the greatest possible desire to do him justice", the Governor was "not satisfied that he was qualified for such promotion".[96]

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93. CO137/532/391 Norman to Holland 14/11/1887.
94. CO137/532.
95. CO137/674/520 Olivier to Crewe 1909.
96. Ibid. Huggins was "a small and not particularly impressive man" but his case was really one of mis-directed discrimination. A Colonial Office note read: "I think he has had hard luck: somehow or other we got the idea that he was rather highly coloured and he has been in Jamaica for 20 years as a Clerk of the Court without ever getting promotion". By the time it was discovered that Huggins was "emphatically not coloured" he was then 50 and no doubt dis-illusioned by his singularly inexplicable fate.

Despite the great diligence, however, by which selection to the Bench was in the late nineteenth century being safeguarded, the Resident Magistracy was not entirely free from instances of judicial misconduct, but discredit of the Court was avoided by prompt, effective and adequate censure "consideration being given, not merely to adjudging a penalty exactly proportioned to the gravity of the particular charge, but also to whether retention in the Public Service was compatible with the public interests".[97] Thus when a Resident Magistrate found his way into Police Barracks in his pyjamas in a state of drunkenness, he was charged, censured and asked to resign, the Colonial Secretary in his letter of censure observing that "a superior officer of the Government is supposed to undertake always to behave himself in a proper manner and this applies with especial force to those charged with the high function of administering justice in the King's Name. This is a constant and perpetual obligation of a magistrate ..... A Government which suffers your conduct to remain unnoticed would run the risk of incurring a far greater scandal".[98]

A colourable defence of the principle of judicial independence in the early twentieth century brought no credit either to the particular Resident Magistrates nor to the principle itself. We have already seen that under Law 43 of 1887 Resident Magistrates had been appointed for specified parishes and that under sections 5 and 6 of Law 36 of 1898 the Governor had been given a power to add extra-parochial out-stations to

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97. CO137/658 Conf. Olivier to Elgin 27/6/1907.
98. CO137/650/116 Swettenham to Elgin 14/3/1906.

the jurisdiction of a Resident Magistrate; the amending Law however only being applicable to Resident Magistrates appointed after the coming into operation of the Law. In 1902 the Governor desired to effect certain economies which would have involved some additions to the court stations of the Resident Magistrates for Portland, St. Catherine and St. Ann. The salary of Mr. Musson, Resident Magistrate for Portland, had been fixed "at a time when the rivers were all unbridged, the roads had not received attention which had since been devoted to them and there was no railway communication in Portland. Since then, however, three Court Stations in Portland had been connected by railway, namely Port Antonio, Hope Bay and Buff Bay".[99] Because of these advancements in road communications "the salary of Mr. Musson is already more in proportion to the duties he had to perform than that of any other Resident Magistrate in the island and there can also be no doubt that his travelling allowance is at present much in excess of his expenditure in travelling on account of the opening of the railway and the improvement of the communication by roads".[100]

Upon the technical ground that their appointments pre-dated Law 36 of 1898 the Resident Magistrates stoutly opposed the additions to their territorial jurisdiction and with their stand the Attorney General could not in law disagree. "It was a general principle to place the emolument of judicial officers beyond the control of the Executive or the

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99. CO137/614/536 Olivier AOG. to Chamberlain 1/11/1900.
100. Ibid.

Legislature, otherwise an independent Magistrate who conscientiously gave decisions unpalatable to the Government, or unpopular with the people might have improper pressures brought to bear upon him".[101]

As in the times of the Seven Years' War, the policy of retrenchment of public expenditure and the principle of judicial independence had come into conflict. In this instance, however, the interests of judicial independence might have been better served by a noble sacrifice of personal rights and convenience in the public interests inasmuch as no motives had lain hidden beneath the avowed objectives of the Governor, nor lurked any sinister design to prostrate the seat of judgment before Executive or Legislature. On the other hand one judge, by traducing the principle of judicial independence, preserved unto himself an unfair advantage which public expenditure had placed at his peculiar advantage, whilst the others, as the Table of September 1897 would suggest, must have been two of the most unoccupied Resident Magistrates in the Island.

The principle of judicial independence suffered grave injury when, behind such ostensible defence, ulterior interests were being served, and though the Crown was anxious not to violate the principle, it could not resist expression of the sentiment that "the Resident Magistrates by their conduct will lose the sympathy of Government".[102]

Another significant consequence of the establishment of the Resident Magistrates' Courts was the rapid development of a legal service and the

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101. CO137/626/126 Hemming to Chamberlain 17/3/1902.
102. CO137/626/126 Hemming to Chamberlain 17/3/1902 (Colonial Office Note on Despatch).

evolution of a cadre of trained and competent officers from among whom it was possible to fill temporary and permanent vacancies in the higher legal and judicial posts of the colony.

Of these the most prominent was the Clerk of the Court. Distant descendant of the Clerk of the Peace and with a statutory lineage through the Clerk of Petty Sessions, Clerk of the District Court and Clerk of the Circuit Court to all whose functions he succeeded, the Clerk of the Court was at his birth the special object of elected members' solicitude. Qualifications to his office, like to that of the Resident Magistracy, necessitated membership of the Bar or of the Solicitors' profession and his maximum salary was not significantly less than the minimum salary of his immediate superior. In the words of the Attorney General "while elected members were for cutting down the salary of the Resident Magistrates they were all for raising the salary of the Clerk. There seems to be a strong notion prevailing among the elected members of Council that Jamaica's salvation is to be worked out by her Solicitors".[103]

History however frustrated expectations. In the course of no very long time most Clerks of the Courts were barristers rather than solicitors.[104] The facilities for leave promoted this trend and during periods of such

103. CO137/531 Hocking to Norman 1/6/1887 (Report on Law 17 of 1887).

104. The trend was commended in the Colonial Office "Most Jamaican Civil Servants take too little English leave and get stale and narrow-minded in consequence. It is a very good thing that West Indian Civil Servants should come to Europe for half-pay leave (few minor officials can afford it) and if they spend their vacation reading for the Bar Examinations and pass such examinations, it is all to their credit and for the good of the Service". CO137/644/183 Swettenham to Lyttleton (Colonial Office Note on Despatch).

leave granted to Deputy Clerks of the Courts, they completed their course of study at the English Bar, so that by 1905 "most senior clerks of the courts were barristers". Their utility attracted notice in the Colonial Office and favourable comment as well". Some of the present native barristers and solicitors make first rate acting Resident Magistrates and are quite fit for promotion to be Resident Magistrates".[105]

Beneficial to the Public Service as this development was, it concealed the seeds of a potential evil. Inadequacy of salaries paid to legal and judicial officers generally rendered these posts unattractive to the practising Bar[106] and it was early observed that "you cannot get any respectable practising Barrister or Solicitor (there are but few) to act on the pay available in any country district".[107] Consequences, injurious to the profession and to legal administration were to flow from the unhappy combination of circumstances. First, a growing alienation developed between barristers practising at the private Bar and those of legal and judicial rank within the Public Service. As each was to grow up in isolation from the other, each would become the poorer for the loss of the training and wealth of experience of the other, the one ignorant of the problems and intricacies of government, the other indifferent to the tribulations of practice at the private Bar. The sense of the

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105. CO137/644/183 Swettenham to Lyttleton 18/4/1905 (Colonial Office Note on Despatch.
106. This was no new development. See Chapter 12.
107. CO137/644/183 Swettenham to Lyttleton 18/4/1905(Colonial Office Note on Despatch).

corporate nature of the Bar was endangered, rendering difficult, and sometimes even impossible, any corporate action between members of a common profession in matters of legal administration. A sausage-machine method of appointment also developed within the Public Service whereby "the judge reaches the bench after service as a junior civil service lawyer, Crown Counsel, senior law officer and magistrate, often with little or no experience of everyday practice".[108] Without the competition of Counsel at the private Bar for the relatively few higher legal and judicial officers, junior officers often see no need to maintain high standards of professional efficiency by wide, varied and constant reading, confident that despite such neglect, by the mere effluxion of time the desired promotion could hardly evade them.

Finally, something requires to be said of legal administration generally during our period by the Resident Magistrates' Courts. These courts had much more to do with the lives and affairs of the people than the Supreme Court and it was of the utmost importance that they should rapidly gain the fullest confidence of the people in their administration of justice. The total absence of any complaint against them was perhaps the most glowing testimony to the general satisfaction that they rendered. "The ability and fairness of the Resident Magistrates as a body"[109] secured, in the view of the Chief Justice, a satisfactory administration of the

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108. See "English Law and Administration of Law in the West Indies" by K.W.Patchett p.78. (Publication by The British Institute of International and Comparative Law).

109. CO137/620/406 Hemming to Chamberlain 5/7/1901 (Conveying view of C.J.Fielding Clarke.

criminal law, and at the very close of the nineteenth century the Governor reported that "at present the Resident Magistrate System works excellently and enjoys, I believe, general confidence".[110]

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110. CO137/614/62 Hemming to Chamberlain 17/12/1900.

CHAPTER XIX

THE SUPREME COURT OF JUDICATURE 1887 - 1900

In the period under consideration no radical changes in the structure or jurisdiction of the Supreme Court were undertaken, but a number of particular developments occurred which it is now proposed to examine.

(A) The City of Kingston Court and the Law to regulate the trial of actions.

By Section 2 of the Resident Magistrates' Law the City of Kingston Court was abolished and thus the special statutory jurisdiction which the Puisne Judges of the Supreme Court had exercised in that Court came to an end.

The circumstances of the creation of that particular jurisdiction had been in part economic and had in part arisen as a consequence of the very extensive criminal and civil jurisdiction given to the District Courts. After the establishment of these latter Courts, the judges of the Supreme Court had become, it is recalled, some of the most unoccupied men in the colony, so much so indeed that their numbers had been in 1872 reduced to two. Subsequently, however, a general dissatisfaction with an Appellate

Court of two judges obliged the restoration of the Supreme Court to three judges, and with a view to economy as well as to fill the time of the judges with judicial labour the City of Kingston Court was created and the number of District Courts reduced to five.

In the re-organisation of the legal system in 1887, however, the Council insisted upon the abolition of the City of Kingston Court and effect was given to this desire in the manner already noticed.

History soon repeated itself and the economic difficulties of the late 1890's quickly revived consideration of the composition of the Supreme Court Bench in the context of retrenchment.

Since the establishment of the District Courts the work of the Supreme Court rapidly declined as we have noted, so much so that, in the opinion of one of the Puisne Judges, "one Chief Justice and one Puisne Judge could fully and efficiently do the work of the Supreme Court", a statement fully borne out by the following Tables :

	Number of Suits Filed		
	Common Law	Equity	
1880	128	10	1.
1881	139	14	
1882	120	15	
1889	75	8	2.
1890	83	13	
1891	191	15	
1903	83	6	3.

There were at this time two Circuits, the Eastern and the Western, but, in effect, as the Western was divided into two, there were three. No two judges, however, were concurrently on circuit, and thus two were always in the capital to give attention to work in Chambers. This latter was never great, some days there being no work at all, and often there was no work for more than two hours.[4.]

In the discussion of efficiency and economy, the issue of a two-judge court once more arose.

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1. Handbook of Jamaica (1883) p.205.
2. Handbook of Jamaica (1892) p.258.
3. Handbook of Jamaica (1906) p.299.
4. Report of Blake's Committee d/d 2/2/1898 CD 137/587.

In February 1898 a Committee set up by Sir Henry Blake to enquire into the possibilities of savings being made in the Judicial among other Departments recommended that "the Resident Magistrate for Kingston (being a barrister) could be brought up for the particular case or cases to from a Court of three (including the Supreme Court Judge from whom the appeal was made) in the same way in which he is brought in whenever a judge of the Supreme Court went on leave.[5] The Committee apprehended no difficulty in cases of appeals from Resident Magistrates, "for if the two Supreme Court Judges disagree, the judgment appealed from would stand, as there will be two judgments (the Judge's and the Resident Magistrate's) against one, which is exactly what is done in Divisional Courts in which two judges sit" [6].

With these recommendations the Chief Justice did not concur, although he readily conceded that judicial business at first instance could be fully and efficiently discharged by two judges. Even, however, at first instance a Court of two judges was apt from time to time to be faced with irritating, if not insuperable, problems. "The occurence of an unusually heavy

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5. Report of Blake's Committee 2/2/1898 (Adopting views of Mr.Justice Lumb) CO 137/587. The Hemming's Committee of April 1898 reported likewise.

6. Ibid.

calendar on Circuit, a long drawn-out case at some particular Circuit Court, or the mere illness of a Supreme Court judge" [7] could entirely dislocate the operations of a Court constituted only of two judges. Above all this, however, it was the view of the Chief Justice that it was chiefly for the maintenance of an efficient and trusted Court of Appeal that three judges were necessary in Jamaica. "Three is always a better consultative body than two, while when the judgment is from one of the members of the Appellate Court there are obvious objections to the number being limited to two. It is an advantage to each member of an Appellate Tribunal to know that his own judgment is subject to the control of others. Having been a member of a Court of two before I came to Jamaica, I have some experience of its practical working and in the public interest I should say that a Court of three is distinctly preferable..... The suggestion of bringing up a Resident Magistrate to act with the two judges in cases where the appeal is from a Supreme Court does not, I confess, commend itself to me..... The course suggested would be derogatory to the prestige of the Supreme Court of Appeal in this island..... To require a Resident Magistrate to sit on the Bench of the Supreme Court without being a member of it would in my opinion be a serious

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7. CO 137/592 Hemming to Chamberlain 4/8/1898.

anomaly and a dangerous innovation, tending to level the distinction between the Supreme Court and the Resident Magistrates' Courts, a result which should, if possible, be avoided." "If one of the two judges were away on leave a Resident Magistrate would be an Acting Judge, and in such case two gentlemen whose permanent appointments were those of Resident Magistrates would be able authoritatively to reverse the judgment of aa judge of the Supreme Court and settle a precedent for the latter Court to act on." [8.]

This argument was supported by other considerations. One very real one was derived from the fact "there were Resident Magistrates [9.] who were impressed that they were better lawyers than the Supreme Court Judges, and there would be no guarantee that the opportunity of reversing the decision of a Supreme

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8. CO 137/592/315 Hemming to Chamberlain 4/8/1898 (Forwarding views of Sir Fielding Clarke, himself a member of the Henning's Committee)

9. Not unlike their predecessors the District Court Judges, some Resident Magistrates "of exalted character" demurred to follow the decisions or rulings of the Supreme Court Judges. Thus W.W.Fisher, Resident Magistrate for Manchester, took umbrage at Mr.Justice Lumb's observations on his failure to have an accused party sign a deposition he had made at a Preliminary Examination. "I can imagine nothing more calculated to bring the administration of justice to disrepute than for a judge of Assize to fling ex cathedra accusations of incompetence or misfeasance broadcast against the Resident Magistrate who is charged with the duty of administering the law to the public. A N D Bicknell, Ag.Resident Magistrate St.James and Hanover openly resented the reversal of his judgment in Petty Sessions by Mr.Justice Northcote and condemned "the absurdity of an appeal from one man to another."

Court Judge might not cloud their judgment and lead to their doing it." 10.

The Attorney General also strongly dissented from the recommendations of the Committee for "the strength and efficiency of the highest and most important Court of a colony such as Jamaica should not be hastily reduced and impaired because at the moment it may be possible to show that there is a decrease in the volume of work and business as compared to the same anticedent period." To the alternative proposal that the third Puisne Judge should be retained and should do the civil work of the Resident Magistrate for Kingston as formerly, he opposed the answer that "it would have a very prejudicial effect on the estimation in which the office of a judge of the Supreme Court would be held and would injuriously affect his dignity."[11]. There also was in the opinion of the Chief Law Officer an objection on sociological grounds. "In a community like this where the proportion of Blacks to Whites is forty to one, it is of the utmost importance that the highest legal tribunal should be regarded with the greatest reverence and that as much dignity as is possible should surround not only the Court itself but the individual members of it - anything which tends to lessen that dignity has a more far-reaching effect than would be credited to

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10. CO 137/592/315 Hemming to Chamberlain 4/8/1898. (Forwarding H.P. Schooles's views)

11. Ibid.

in a country like England or by persons not familiar with the feelings and ideas of the population of a West India Colony" [12].

Between the demands for economy in colonial expenditure and the inescapable necessity for the maintenance of an efficient and respectable Court of Appeal opinion even in the Colonial Office wavered for a while. Earliest reaction was opposed to the suggestion that one Puisne Judge should do the work of a Resident Magistrate, and it was questioned whether one of the Puisne judgeships should be abolished and the Resident Magistrate for Kingston added to the Appeal Court "but this should be considered." [13] Later it was decided "to make a try of two judges when a vacancy arose among the three Supreme Court Judges" but on the 26th of November 1898, the final decision was taken that "unless and until a separate Court of Appeal for the West Indies is established the Supreme Court of Jamaica should continue to consist of three Judges but the civil work of the Resident Magistrate's Court for Kingston should be given to the Supreme Court." [14]

This decision became the nucleus around which Law 18 of 1900 was framed. Enacted into law on the 15th of May 1900 "the Law to regulate the trial of certain Kingston actions"

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12. CO 137/592/315 Hemming to Chamberlain 4/8/1898.

13. CO 137/587/3 Blake to Chamberlain 4/1/1898 (Colonial Office Notes on Dispatch)

14. CO 137/592/315 Hemming to Chamberlain 4/8/1898.(Colonial Office note thereon)

applied only to actions at law whether arising from contract or from tort or from both in which the debt or damage claimed exceeded £15 and which but for the Law would have been disposed of in the Resident Magistrate's Court for Kingston. [15.] Section 2 of the Law authorised the transference for trial before the Supreme Court of any such action called on before the Resident Magistrate for Kingston unless the action went by default, was struck out for want of appearance or there was an interlocutory application to be dealt with before trial.

On transfer to the Supreme Court such actions were to be tried by a Puisne Judge of the Supreme Court sitting alone without a jury, and a judge of the Supreme Court when trying an action transferred under the Law constituted a Court of the Supreme Court, was invested also with all the powers which the Resident Magistrate for Kingston would have if he were trying the action and in addition had all the powers of a judge of the Supreme Court presiding in the Circuit Court in the trial of a Supreme Court action.

Appeals from any order or judgment made or pronounced by a Judge of the Supreme Court exercising jurisdiction under the Law lay as if such order or judgment had been made by the

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15. S.2. By section 1 the Governor in Privy Council was given a discretion to increase or decrease the sum of £15 or any sum substituted for the same.

Resident Magistrate for Kingston save that (a) the judge was not required to draw up for the Court of Appeal a statement of his reasons for the order or judgment appealed from, (b) the appellant was required to complete his appeal giving all requisite notices and security within fourteen days of the date of the judgment appealed from and (c) Notice of appeal was required in writing and not verbal.[16.]

(B) The Supreme Court.

The principal ground of grievance concerning the administration of justice in the Supreme Court during the political agitation of the 1880's was the enormous expense attending proceeding under the Civil Procedure Code of 1879. Concerning this Code the views of a judge of the Supreme Court and of the Attorney General have already been noticed,[17.] and the Governor, Sir Henry Norman, recorded as well that ever since he had been in Jamaica he had been accustomed to hear on all sides complaints of the expense of proceedings in the Court, "expense which it is alleged amounts to almost a prohibition to take proceedings in the Court and which has the effect of driving much business out of the Court."[18.]

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16. S.8.

17. See Chapter 17

18. CO 137/535/207 Norman to Knutsford 22/5/1888. Chief Justice Gib-Ellis contended that the Code had not been given a fair trial and that there was no need for a change. A great defect, however, of the Code was that it contained no provisions for "Summons for Directions"

Similar complaints had been made about the English prototype of the Code, and there it was esteemed so seriously defective that they had been superseded by the Rules and Orders of 1883.

By Law 40 of 1888, the provisions of the latter English Rules and orders were adopted, repealing considerable portions of the earlier law, and establishing a system of procedure for the Supreme Court, which has remained substantially in the same form down to the present day.

(C) The Circuit Court.

By Law 35 of 1887, The Circuit Court Criminal Jurisdiction Law, "the wish was fulfilled of elected members of the Council and of several members of the community that a Circuit Court should be held in the Chief town of every parish." [19].

In addition an omission of the Judicature Law was now removed. No provision as to the limits of the jurisdiction of the Circuit Courts had hitherto been prescribed. Section 2 of Law 35 of 1887 now provided that the jurisdiction of the Circuit Court of every parish should extend over the whole of such parish and over so much of an adjoining parish as lies within one mile of the boundary of the first-mentioned and over so

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19. CO 137/532/408 Norman to Holland 26/11/1887.

much of the sea as lies within three miles of the shore of such parish, and over the high seas in respect of crimes within the jurisdiction of the Supreme Court. Exceptionally, in the case of the Kingston Circuit Court, it was provided that the jurisdiction of that Court should extend over the parish of St. Andrew as if it formed part of the parish of Kingston.

(D) Administration of the Criminal Law.

Two Assistant Attorneys General had been appointed in 1870 [20]. to conduct prosecutions in the Circuit Courts of the island. With their appointment the transition from private to public responsibility in the administration of the criminal law may truly be said to have begun, and the importance of these officers in this connection attracted significant judicial notice in 1875: "Their duties on Circuit are so important as regards the due administration of criminal justice that the remuneration should be sufficient to secure to the Government the services of the best men, and it would never do to allow the office of Crown Prosecutor to be filled by a second-rate man who would not command public respect, and who would find more than his match in a Counsel for the prisoner" [21].

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20. Law 1 of 1870. See Chapter 15.

21. CO 137/479 (Confidential) Grey to Carnarvon April 1875 (forwarding views of Chief Justice Lucie Smith)

This out-spoken Chief Justice who had not hesitated to observe that the late incumbent of the office of Assistant Attorney General was not very efficient was equally flattering in his esteem of the new incumbent and embraced the opportunity to place on record his concept of acceptable behaviour in so high and respectable a legal officer. "Of the island Bar Mr. Advocate Lindo is (apart from the Attorney General Mr.Barne) facile princeps. He is a man of real ability and would make a figure anywhere. Indeed, I consider him in the practice of his profession one of the ablest men I have ever met, and if he would accept the appointment he would be a tower of strength to the Government in all public prosecutions on the Western Circuit. We know nothing against his character to render him in eligible on the score of moral unfitness. He has always steered clear of politics and is not mixed up with any of the cliques of Kingston." [22].

The death in April 1897 of Mr.Lindo offered to the Legislature an opportunity which elected members had long desired [23].

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22. CO 137/479 (Confidential) Grey to Carnarvon April 1875 (forwarding views of Chief Justice Lucie Smith)

23. They thought that the Attorney General should go more often on circuit. This the Governor considered injurious to the interests of Government inasmuch as the Attorney General was a member of the Legislature and was responsible for introducing and conducting the debates on many legislative measures.

to effect retrenchment in the Attorney General's Department which involved the abolition of the two offices of Assistant Attorney General, and the re-distribution of the work and responsibility for criminal prosecutions between the Attorney General and a Solicitor General who was to be appointed.

Law 32 of 1897 "The Law Officers' Law 1897" gave effect to these proposals. Power was given to the Governor to appoint as Solicitor General a member of the Bar of England, Scotland or Ireland, a member of the Jamaica Bar, or an Advocate,[24] or Solicitor of the Supreme Court of Jamaica of at least five years' standing. Holding his office during pleasure and remunerated at £500 per annum, this officer's duty included advising the Government upon all questions which were submitted to him for his opinion, conducting prosecutions in the Circuit Courts, and also in the Resident Magistrates' and Petty Sessions Courts when directed by the Governor so to do.

(E) The Jury System.

The jury system had never worked satisfactorily in Jamaica, and as late as 1884 had been the object of fierce criticism by members of the Supreme Court Bench and by the Attorney General.[26] The prevailing ignorance of the

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24. As to Advocates, see infra Chapter 20.

25. Thomas Bancroft Oughton was the first incumbent of this office. Private practice was allowed whilst holding the office.

26. See e.g. Chapter 17.

population made it difficult at times to procure jurors sufficiently intelligent to adjudicate competently upon cases of any intricacy or involvement, and their blunders merely served to aggravate the high cost of litigation. Their corruption too vitiated the course of justice whenever any case exciting popular emotion or appealing to particular prejudices in the heterogeneous society came before them; nor did the addition in 1881 of householders of the annual value of £50 to the special jury panel of justices of the peace avail much.

Certain proceedings in 1887 focussed attention once again on the troublesome subject and may have excited legislation which culminated with a consolidating measure just before the close of the century. A Treasury Clerk in the Parochial Treasury of St.Catherine, Mr.Arrowsmith, "between the months of October and December 1886 forged, uttered and offered certain requests and receipts for payment of monies deposited in the Government Savings Bank.[27] Out of these mis-deeds three separate charges arose but "as is not uncommonly the case here where the prisoner who comes before a Jury belongs to a Jamaica family and has many local ties there was a miscarriage of justice" [28] There was a paucity of jurors,and in the last trial but 18 were in

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27. CO 137/531/269 Norman to Holland 31/8/1887.

28. Ibid.

attendance of a panel of 32. Under Law 48 of 1869, "The Law to regulate juries" there was in cases of non-capital felony a right of peremptory challenge up to a maximum of seven.[29] It only remained for the chicanery of the lawyers to effect the complete prostitution of justice. "The most intelligent and independent jurors from whom a fair verdict could have been expected were peremptorily challenged whereby a jury of almost the accused's selection was in each case obtained. On two of the trials the Jurors were so challenged that a full jury could not be had without taking two jurors who had sat on trials of previous cases and had acquitted the accused."[30]

In the following year several categories of persons formerly exempt from jury service were restored to the lists in an effort to improve intelligence and trustworthiness. Eight years later more radical steps were taken. The mode of preparing the jury lists as well as the qualifications for jury service were revised. The former had been animadverted upon by the Chief Justice who recalled an alarming event in the St. Catherine Circuit Court when of 32 jurors summoned one was dead, six could not be found, two

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29. Twelve peremptory challenges were allowed under the Law in capital cases. S.12.

30. CO 137/531/269 Norman to Holland 31/8/1887 (Forwarding the Attorney General's Report on the cases)

had left the island and one was over age.[31] By Law 12 of 1896 the qualifications for jury service were brought into line with those for registration as electors and the Collector of Taxes of the various parishes were required to send the lists of electors prepared by them to the Inspectors of Police who prepared the lists which were finally settled by the Justices of the parish.

These remedial measures failed, however, to effect any satisfactory solution, and two years later the Attorney General reported that Law 12 of 1896 had produced unwieldy jury lists and had resulted in a vast number of very ignorant and un-intelligent men being qualified as jurymen.[32]

Law 13 of 1898, essentially a consolidating measure, nevertheless introduced some changes most significant of which was the raising of the qualifications for jury service "from which it was believed that good results will follow"[33] It provided that every man between the ages of 21 and 60 residing in any parish in Jamaica who (i) was in possession in the parish

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31. CO 137/567 Blake to Chamberlain 13/8/1895 (forwarding communication from the Chief Justice.)

32. CO 137/591/290 Hemming to Chamberlain 13/7/1898 (Forwarding Attorney General's Report on Law 13 of 1898)

33. CO 137/591/290 Hemming to Chamberlain 13/7/1898 (Forwarding The Attorney General's Report on Law 13 of 1898)

of any dwelling house, store, wharf, warehouse, office or place of business of the value of £10 a year or upwards, or (ii) was in possession in the same parish of one or more holdings of land, the area of which either singly or together exceeded 20 acres or (iii) was in receipt of an annual salary of £50 or upwards, was qualified and liable for jury service, provided, however, that he could speak, read and write English and had not been convicted of treason, felony, or of any infamous crime of which he had not received a free pardon.[34] Measures designed to ensure the fairer and more equitable incidence of jury service were prescribed, and for the first time jurors were allowed, if the judge did not otherwise direct, to separate during the course of the trial of cases in which the accused was not upon conviction exposed to the sentence of death. In cases of treason and capital felony the jury consisted of twelve men, whilst seven composed the jury in cases of non-capital felony and misdemeanours, but as formerly, the verdict in all criminal cases had to be unanimous. In all civil cases, however, the jury whether special or common, was to consist of seven persons and the verdict was to be that of five jurors at least.

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34. S S 4 - 6. There were saving provisions for aliens who were naturalised or domiciled in the island for 5 years or upwards.

(F) Judicial Salaries and Judicial Independence.

The Select Committee of the Legislative Council which had been formed in 1885 to report what reductions could be made in the public expenditure of the island had considered that "£1200 and £1000 per annum with travelling allowances were enough for the senior and junior Puisne Judges of Jamaica." 35. These gentlemen had been in receipt of stipends amounting, as we have seen,[36.] to £1500 per annum, the Chief Justice's having upon the death in 1883 of his predecessor, been reduced from £2500 to £2000 per annum.

These proposed reductions excited the strong objection of the Governor who considered them "unjust and discouraging to public servants notwithstanding the compensation suggested, the finances of the colony being by no means in a depressed state." 37.

The Crown likewise was opposed to the colonial addiction to regarding judicial salaries as a barometer of prevailing economic conditions and opportunity was taken subsequently to set forth in a Dispatch the official imperial approach to this important question. "I do not consider that the salaries of

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35. CO 137/523 Norman to Stanley 22/10/1885.

36. See Chapter 16.

37. CO 137/523 Norman to Stanley 22/10/1885.

any of the most important offices of the Jamaica Public Service are too high ..... I may take this opportunity to set forth what I regard as the standard by which such questions as these should be judged. The success of any business, whether public or private, must always depend far more on the quality of the higher officials employed than on the subordinate staff, and it is necessary in the interest of good government to maintain such a scale of salaries for the highest post as will attract competent men into the Public Service, give the Government the command of training and experience, whether from inside or from outside a Colony and reward long service and conspicuous ability by substantial promotion. The true secret of efficient and honest administration is to pay men well, to work them hard, and to hold them responsible." [38]

The wisdom of this Dispatch had no appeal for elected members who, like their predecessors in the Assembly, seemed committed to the principle of "cutting down everything and everybody." [39] By 1901 when another Select Committee had recommended "either the reduction of the Puisne Judges by one and reduction of his salary to £1000, and the Resident

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38. Chamberlain in a Dispatch dated 30/11/1898. See CO 137/647/571 Swettenham to Lyttleton 12/12/1905.

39. See Chapter 11

Magistrate for Kingston to sit in the Supreme Court where necessary or two Puisne Judges, one of whom to perform the duties of the Resident Magistrate for Kingston," 40. a despondent Governor wrote : "The people of Jamaica, through their representatives prefer to run the risk of having an underpaid and dissatisfied Civil Service rather than pay for an efficient one" 41.

If the salaries paid to the highest judicial officers of the island were inadequate, the provisions for the security of those incomes were even more unsatisfactory.

We have seen that in 1854 the salaries of the Supreme Court Judges had been only partially secured in the Civil List included in the Island Act 17 V C 29, an Act for the better government of the island. Upon the establishment of Crown Colony Government that Act was swept away, and with it even the partial security they had enjoyed. Thereafter judicial salaries were provided for by permanent laws, and were in no other way secured save that the Judicature Law of 1879 directed their payment out of General Revenue. 42. Such salaries, however, were not fixed, but were expressed

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40. CO 137/621/541 Hemming to Chamberlain 7/9/1901.

41. Ibid.

42. Judges however had no reason for fear, for the security of their salaries from a non-elective Legislature between 1866 and 1884.

not to exceed particular sums, namely £2,500 in the case of the Chief Justice and £1,500 in the case of the Puisne Judges, with the result that upon the return to elected membership in the Legislature, whenever the Estimates were brought forward, judicial salaries engendered "endless discussions" and "the judges experienced anxiety whether their pay could be considered as fixed or whether it is not liable to a sudden reduction."[43]

In 1886 the question of a permanent Civil List came underconsideration. Among conditions upon which a desired extension of elected membership in the Council would be granted, the Crown proposed that the Legislature should agree to enacts Law providing (i) that all specific pledges as to salaries or pensions made to individual Public Officers before the date of the Order in Council of 1884.[44] should be ratified and maintained, (ii) that all existing public officers should, as long as they hold their existing offices, and their offices existed under their present conditions, receive salaries not less than those fixed when they were appointed, and that if

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43. CO 137/532/378 Norman to Holland 7/11/1887.

44. Judges' salaries were not included in the Civil List embodied in this Order in Council, perhaps because they had already been prescribed in the Judicature Law. The very first act of elected members in 1884 was to question in the legality of this Civil List CO 137/518/405 Norman to Derby 1/10/1884.

offices were abolished or absorbed and the officers holding them could not be provided with appointments of equal value, they should receive pensions or compensation under the Pensions Law or a just equivalent to the loss sustained, and (iii) for a Civil List permanently securing suitable salaries to the principal public officers, including the Judges.[45]

Imperial mis-giving which had underlined the stringency of the conditions were not altogether mis-placed. In October of that year Norman reported that "the conditions of Her Majesty's Government are unacceptable to elected members"[46] who preferred to forego an extension of their membership in the Legislature rather than to maintain, among other things, an independent Judiciary.

In November of the following year the inflexible attitude of the elected representatives had changed somewhat. A Select Committee had recommended the adoption of a Civil List for the Colony and the confirmation of certain pledges as to pensions. Their Report was unanimously confirmed by the Legislative Council, and a Civil List was approved. It was not, however, until 1895 that a Civil List Law, Law 26 of that year was enacted prescribing a salary of £2000 per annum for the Chief Justice and £1200 and £1000 per annum for the Senior and Junior

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45. CO 137/528/371 Norman to Stanhope 19/10/1886.
46. Ibid.

Puisne Judges respectively. As the latter were then in receipt of salaries of the sums prescribed, the security thereby provided was as it was for decades [47.] before only a partial one.

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47. See Chapter 10. In many ways the Judiciary was ironically a victim of the political changes of 1866. Security of their salaries, partial as it was under the Act of 1854, was lost in 1866. Security of tenure was lost in 1879 by the repeal of the Judicial Amendment Act 1855 (See Note 18 of Chapter 16) by which the provisions of 21 G 3 C 25 and 57 G 3 C 17 were incorporated and so Jamaica Supreme Court Judges who alone among colonial judges had been exempt from the principle of Tyrell v Secretary of State for the Colonies (1953) 2 Q 8 p.482 lost their privileged status which was only regained in 1957.

PART V.

The Legal Profession.

CHAPTER XX

The Legal Profession

In the foregoing history of the legal system of Jamaica references to the legal profession became from time to time inevitable. A composite account must now be rendered of the evolution of this profession and of its role in the legal life of the colonial community.

(A) The Evolution of the Legal Profession

The subject falls for consideration under two heads, namely, the pre-rebellion period during which admission into the profession was regulated by some imprecise and inadequate statutory rules, and the period after 1865 in the course of which the main lines of its existing organisation were worked out.

(i) The Pre-rebellion period.

The early unified character of the profession, the prolonged incidence of pettifogging as well as the measures employed to regulate admission into it constituted the outstanding features of the evolution of the legal profession in this era.

(a) The unified character of the profession. In the early practice of law in Jamaica, as indeed it continued to be for considerably longer in several of the smaller British Caribbean islands, the offices of Counsel, Attorney, Solicitor and Proctor were not kept separate and distinct.[1] Thus in 1678 when the Lords of Trade altered a local Act by providing different forms of oaths for the different categories of legal practitioners, among reasons for its rejection drawn up a Committee of the House was one to the effect that "Counsellors, lawyers and attornies are not distinguished in the Courts of Jamaica, so they ought to take the same oaths, since they all draw declarations and appear as attornies."[2]

This "fused" state of the profession lasted until 1720. On the 12th August of that year the Chancellor promulgated a rule "that for supporting decency in court, it is directed that all present practitioners make their election according to their respective educations, either to attend the bar as Counsel or pleaders, or practise as solicitors, to the end that the business in the court may be better carried on, and the Counsel on their parts better instructed."[3] This separation in the practice of the upper and lower branches of the profession which began in the Court of Chancery was in due course extended to the Superior

1. This circumstance was attributable, in the opinion of the Commissioners of Legal Enquiry, to "The inadequacy of remuneration to the practitioner in the single capacity". Report of Commissioners of Legal Enquiry Op. Cit. p.68.
2. CO140/2/ 27.
3. Report of Commissioners of Legal Enquiry Op. Cit. p.299.

Courts of Law and until 1869 "barristers and solicitors were confined to their respective branches of legal practice in all business in the Superior Courts of Law and Equity, whilst Solicitors had a right of audience in the inferior courts."[4]

Another distinctive feature of practice in the legal profession in Jamaica must here be noted. Unlike in the Mother Country, Attorneys, Solicitors and Proctors were not restricted in Jamaica to practise in their respective Courts of Law, Equity and Ordinary and Admiralty, but the same persons exercised their professions in all the Courts provided they had first been admitted to practise in each. Thus, as we have already seen,[5] the eventual fusion into one system in 1879 of all the Superior Courts of Law and Equity was rendered "a trifling and easy task here where the same men are already judges, advocates and practitioners in all the courts."[6]

(b) Pettifogging and the remedial legislative measures. Gain, the quest for which had lured so many settlers to the American plantations, did not fail to exercise its spell upon a category of adventurers described or describing themselves either as Counsellors, lawyers, attornies or solicitors. The author of Plantation Justice, a resident of Barbados, described as coming out to the colonies "many clerks and other

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4. CO137/490/161 Musgrave to Hicks Beach 2/6/1879.
5. See Chapter 16
6. CO137/443 Grant to Granville 24/8/1869.

small dealers in the Law"[7] who were ignorant of it. That same year, 1701, Larkin, a royal representative sent out to the American colonies to superintend the proper establishment of Vice-Admiralty Courts, spoke of having stepped into some colonial courts where "matters were strangely managed"[8] and at Bermuda he made the acquaintance of "Mr. Meresham, one that was a grocer in London, but set up here for a mighty lawyer."[9] At that same period too, the Governor of Barbados earnestly solicited of the Board of Trade the appointment of a competent Attorney General on whose advice he could rely "for here are some little animals who call themselves lawyers and talk to me sometimes of Pleas, Demurrers, Errors and Exceptions which I understand as little as they do."[10]

With these "little animals" Jamaica, largest and potentially wealthiest of the British Caribbean islands, not unnaturally abounded, encouraged no doubt by the Declaratory Acts, earliest of which promulgated in 1664, extended to these legal adventurers "a mighty volume of statutes one half of which were either useless or vexatious to ourselves in England"[11] and which "in a hundred years the people could not be considerable enough in numbers to have occasion for the hundredth part of them."[12] Accordingly, the island was described as early as 1677 as having been invaded by "a parcel of petti-foggers who set the people together by the ears in the endless labyrinth of the law, encouraging

7. Anonymous. Plantation Justice (2nd. ed.) 1702.
8. CSP Col 1701 No.1103 Larkin to CTP 22/12/1701.
9. CSP Col 1702 No. 1042 Larkin to CTP.
10. CSP Col 1701 No. 600 Codrington to CTP 1701.
11. Long Op. Cit. Vol. I p.604.
12. Ibid.

vexatious and troublesome proceedings so that the whole wealth of the island came into the hands of attornies and solicitors."[13]

From the very infancy of the colony, therefore, the problem of quacks in the legal profession and the regulation and discipline of the profession occupied executive and legislative attention.

The first recorded official action was an instruction issued in 1671 to the Chief Justice by the Governor to "do his utmost to prevent the increase of law-suits and discourage lawyers, attornies, solicitors and suchlike who stirred up differences and suits amongst His Majesty's subjects."[14] Not surprisingly, such a proceeding failed in its intent, and two years later resort was had to the cruder and more drastic legislative device of the suppression of the multiplicity of law-suits. By an Act of 1673 no Counsel, lawyer, attorney or solicitor was allowed, under pain of a fine of £20, to plead, inform or open any case whatsoever for or on behalf of any person whatsoever. Two years later, however, the Act had to be repealed inasmuch as "many of His Majesty's subjects for want of some known and experienced in the Laws to speak for them and open and plead their causes in the several Courts of Judicature ... were in danger to lose their just actions to their prejudice and damage."[15]

Whilst the indispensability of a competent legal profession to the peace, order and economic welfare of society was thus early demonstrated

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13. Long Op. Cit. Vol. I. p.604. See also Chapter 3.
14. CO140/2 Appendix to the Journals p.36.
15. CO139/4.

the evil of quackery persisted. An Act of 1675 for the establishing and regulating of the several Courts of Justice in the island enjoined under pain of a fine of £5 and disbarment that no Counsel, lawyer or attorney should practise before the Courts until so admitted, and mismanagement of their clients' affairs was rnedered punishable by a mulct in full costs determinable in a summary manner.[16]

The want, however, of any clear criteria by which the lay judges were to be guided in exercise of their important statutory powers of admission to or exclusion from practice rendered the Act ineffective with the result that the increase of small dealers in the law went on unabated. "Lawyers such as we have"[17] were the terms of disapprobation with which the Lt. Governor in 1702 referred to the legal profession and in 1720 the Chief Justice conceded that "for want of knowledge both in Bench and Bar the laws were wretchedly mis-construed and perverted."[18]

In 1722 action was initiated in the House to rid the profession of persons pretending to legal qualification. A Committee of the House was ordered to bring in a Bill with a clause declaring the qualifications of pleading lawyers, attornies and clerks in chancery; viz. "None to be admitted for the future as council, or pleading lawyer, who doth not produce a testimonial of his having been admitted into some one of the four societies or inns of court in London, and performed all the duties and exercises of that society, and that he make oath of the truth thereof;

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16. This Act was made permanent in 1681. See 33 C.2C3S4 an Act for establishing Courts and directing the Marshal's Proceedings."
17. CSP Col 1702 No. 912 Lt. Governor Beckford to CTP 1702.
18. CSP Col 1719-1720 No. 548 Bernard to Chetwynd 4/2/1720. See also Chapters 5 and 6.

and no special declaration or pleading to be received, unless the same be signed by such council; nor any to be admitted for the future as attornies or clerks in chancery, who shall not produce a certificate of his having been admitted as such in some of His Majesty's Courts of Westminster or Dublin, or been admitted into or performed all the duties or exercises of some of the known inns of chancery in London, or that he hath at least served a full apprenticeship to some clerk or attorney so admitted and make oath of the truth of such certificate; being convicted of falsity in said oaths, liable to pains of wilful perjury."[19] In the following year, however, the Committee reported that that part of the Bill relating to lawyers should be omitted "for by declaring the Laws of England to be in force, the ends proposed by it will be sufficiently answered,"[20] meaning doubtlessly that by force of the local Declaratory Acts, the laws of the Mother-Country regulating admission to the respective branches of the legal profession there, were likewise laws in Jamaica. Strictly correct, but practically ineffectual, this recommendation found favour with the House and the Bill was dropped.

In the absence of any effective checks infiltration by quacks into the legal profession persisted, and was further fostered by the addition in 1758 to the legal system of the Assize Courts. Held four times a year in each county so that a Court sat in one or other of the counties every month in the year, the Assize Courts did a great deal of business

19. CO140/9 p.427.
20. CO140/9 p.456.

in which in their respective fields both branches of the profession participated. "The members of the law of course meet with great encouragement here and among them are many no doubt who find their account in setting honest planters together by the ears and in practising all the detestable arts and mysteries of chicanery, knavery and petti-fogging. Jamaica has its Old Bailey Solicitors as well as London."[21]

As the legal business of the country expanded in the eighteenth century "The necessity that all practising attornies and solicitors in this island should be regularly educated and brought up to the business of their respective professions"[22] became more insistent and the first practical measure to that end was taken in 1763. 4G3C8 (1763) "for regulating among other things the admission of attornies in the island" placed such admission on two bases, namely, production of a certificate of admission as an attorney, solicitor or proctor in some of the Courts of Westminster, or some of the Courts of Chancery, King's Bench, Common Pleas or Exchequer in the Kingdom of Ireland[23] or service of articleship for a period of 5 years with some sworn attorney or solicitor on the island. In addition the articles were required to be registered and at the end of the articleship the clerk had to be

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21. Long Op. Cit. Vol. I p.77 footnote
22. Section 2 of 4G3C8 (1763).
23. Writers to the Signet. Scottish Solicitors and Clerks articled to either for 3 years and articled locally for one year were similarly admitted to practise in the island. 4G3C8S3

examined by two barristers and certified as duly qualified for admission into the profession.

Like its predecessors this measure proved insufficient for its objects. Many entered into articles, duly recorded the same, but went off into other pursuits until the period of articleship had expired, and then, without any formal training whatsoever, secured the necessary certificates from two barristers and "got themselves admitted into a profession of which they were totally ignorant to the very great injury of persons employing such persons."[24]

Act 14G3C3 (1773) "for the further regulating of solicitors and attornies at law, practising in the several courts on this island," passed ten years later, was essentially a corrective measure. Section 1 preserved the rights of practice of those in the profession at the time of its enactment and re-affirmed the right of admission based upon production of the necessary evidence of qualification to practise in the English, Scottish or Irish Courts. For the future, however, no person under the age of 16 was to be received in articles, nor for less than five years, and the deeds of articleship duly proved were now required to be recorded in the Supreme Court within 3 months of its execution, failing which it would become void and of no effect. Articled clerks had to be examined in open court by the Chief Justice, and as an indispensable pre-requisite to their admission, proof upon affidavit had to be tendered to the Supreme Court that they had "really and truly

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24. 14G3C3SI.

served as clerks in the offices of their attorney, solicitor or proctor for the full statutory period."[24] Other provisions were calculated to promote respectability in the practice of the profession and to discourage petti-fogging. Thus touting, except by the Solicitor's own clerk, was made punishable by a fine of £100 and striking off the list of attornies, and practice by un-admitted persons even in the petty courts was prohibited under a penalty of £100 upon the culprit and by twice that sum upon the Custos, Chief Judge or Assistant Judges by whom the practice was allowed.

This Act was not without its defects. For want of knowledge on the part of the examining barristers under the earlier Act, the Act of 1773 substituted the ignorance of the examining lay Chief Justice, and thus, until the first professional Chief Justice was appointed at the dawn of the nineteenth century, there could be no assurance that only articled clerks truly knowledgeable in their profession were admitted to the practice of it. It was not uncommon too for those who by misconduct or otherwise had been disbarred from practice in the Mother Country to resume their careers in the colony after having duly exhibited the necessary statutory evidence of admission to their profession, but concealing the fact of their disbarment.[25] Deliberate circumvention of the Act was likewise not unknown, and as early as 1775 William Harry of St. Catherine petitioned the House to exempt him from its provisions.

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24. 14G3C3SS 2-4
25. See Infra.

Articled for eight years to Messrs. Darling and Myers, Attornies at Law, his articles had not been drawn up nor recorded in compliance with the Act, nor could he establish proof of "real and true service as a clerk" and so his application had been rejected by the Courts.[26] The Legislature obliged with a private Act.

Until after the rebellion, however, only the second defect engaged legislative attention. Section 9 of 6VC23 (1843) directed that "no person shall be admitted to practise as an Attorney, Solicitor or Proctor under any certificate of admission in the Courts of Westminster or any other of the Courts of the United Kingdom unless accompanied by authentic documents showing and certifying under the seal of the respective Courts that the party applying to be admitted still continues on the rolls of the Court."

Finally the Imperial Act 20 and 21 VC39 (1857) "The Colonial Attornies Relief Act" may here be noted. By an Order in Council issued the 31st of July 1858[27] Jamaican Attornies and Solicitors admitted to practise in the local Courts were for the first time accorded equal rights of practice before the English Courts as their colleagues in England had for over two centuries enjoyed in the colonies.

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26. CO140/46.
27. Chamberlain to Blake 14/5/1896 "The Colonial Attorneys Relief Act was brought into operation in Jamaica by Order in Council of 31/X/1858."

(ii) The Post-rebellion period. Upon the re-establishment in 1868 of an intermediate judicial system "quite a new department of professional business was called into existence"[28] and as a necessary part of the programme of general reform in the administration of justice, regulation of the Solicitors' Branch of the legal profession, to which the District Courts had almost become an exclusive domain, demanded stricter attention.[29]

Law 9 of 1869 "The Attorneys Admission Law" consolidated and amended, by the introduction of provisions for systematic examinations on the principle of the English Statutes on the subject, the Laws for the admission of Attorneys. By this Law the Judges of the Supreme Court were required to make regulations, firstly, for the preliminary examination in such branches of general knowledge as they deemed proper of all persons who were desirous of becoming articled clerks; secondly, for an intermediate examination of articled clerks in such branches of general knowledge and in law after the lapse of a certain period of their term of service in articles; thirdly, for a final examination in such branches of Law as the judges deemed necessary after the candidates had served the full term of their articles; and finally, the judges were required to satisfy themselves of the general fitness and

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28. Handbook of Jamaica 1881 p.201.
29. Legal Education came once more to be provided by the Inns of Court and in 1852 the Council of Legal Education was established, consisting of representatives of the four Inns of Court under whose control Bar Examinations were held. Legal training for the Bar and the control of its members were thus already placed on a better footing.

capacity of candidates before admitting them upon the roll.[30] The conditions of articleship were also tightened. Whilst its duration remained at five years, not more than two clerks were permitted to be in articles to any one Attorney, Solicitor or Proctor at the same time and they were prohibited during the course of such articles from holding any office or engaging in any employment other than that of clerks to their respective Attornies.[31] Provisions were re-introduced in restraint of unauthorised practice of the profession[32] and for the proper notation of the names of those who from time to time were struck off the rolls,[33] and it may be noticed that contrary to the established practice, it was now provided that upon admission and enrolment as an Attorney of the Supreme Court, the practitioner thereupon became entitled to practise in any other Court of the island upon the mere production of his admission in the Supreme Court.[34]

Within a few months of the enactment of Law 9 of 1869 another measure more radical in its consequences in respect of both branches of the legal profession was promulgated.[35] We have already seen that since 1720 Barristers and Solicitors were confined to their respective branches of legal practice in all business in the Supreme Court, whilst Solicitors had a right of audience in the inferior courts. The result of this

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30. S13 of Law 9 of 1869.
31. S 12.
32. S 21.
33. S 19.
34. S 16.
35. Supra.

separation was to give to the Solicitors a monopoly of business in the inferior courts. The business of the lower branch of the profession had been further enhanced by the creation in 1856 of the Circuit Courts from which, as we have also seen,[36] "barristers were necessarily excluded."[37] When also in 1868 the District Courts were established "they drew off a considerable proportion of the business that would otherwise have fallen to the Supreme Court and left little scope to Barristers for the regular exercise of their profession."[38] "In consequence of this the Bar diminished to such an extent that there was no longer sufficient Barristers for the need of the suitors in the Supreme Court"[39] and legal representation in that Court was divided between only two practising barristers, one of whom had but lately been called to the Bar. The result was that their engagement in every suit became obligatory and the suitors' right of choice of representation in the highest court of the land was reduced to a mullity.

Law 45 of 1869, a Law to allow Attorneys to practise as Counsel in certain circumstances, was the legislative measure devised by the Governor to eradicate "this evil which had become so great as to amount to the practical denial of justice to suitors."[40] This Law created a

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36. See Chapter
37. C0137/366 Statement by Mr. Justice Cargill February 1862.
38. C0137/490/161 Musgrave to Hicks Beach 2/6/1879 (Report of O'Malley Attorney General enclosed).
39. C0137/490/161 Musgrave to Hicks Beach 2/6/1879 (Report of O'Malley Attorney General enclosed).
40. C0137/447/29 Grant to Granville 8/2/70.

third category of legal practitioners called Advocates. To this class the Judges of the Supreme Court "whether in term or out of term, as occasion shall appear to them to require"[41] were empowered to admit a limited number of Attorneys of not less than seven years' standing, and being so admitted, the latter were entitled to practise "as Counsel or Advocates in all matters and causes whatsoever in any of Her Majesty's Courts of Jamaica in this island with rank and precedence immediately after the Bar, and as between themselves, according to the order and time of their admission as Attorneys."[41]

Four legal gentlemen were, during the January Term of 1870, created Advocates by the Judges of the Supreme Court in exercise of their statutory power, and in the view of one of them "the Law had been a complete success and the improved working of the Bar in this last term was remarkable."[42]

Justice to the public had, however, been secured by Law 45 of 1869 at the expense of justice to the members of the Bar, albeit few, and within a month of its coming into operation four members thereof,[43] including the Senior Puisne Judge Mr. Justice Cargill in a petition to the Colonial Office laid bare the nature of the professional practice to which the Law had given rise and to its inequalities: "Under this Act, the Supreme Court has decided that Attorneys appointed Advocates may

41. S I.
42. CO137/447/29 Grant to Granville 8/2/70 (Forwarding views of one of the Judges of the Supreme Court).
43. There were, as has already been said, only two practising barristers at this time. Of the remaining two who petitioned, one was the Senior Puisne Judge and the fourth was disqualified from practice.

not only receive instructions from other Attorneys but may also hold briefs in cases where they themselves are the Attorneys on the record.[44] These Attorneys have therefore the right to practise as Attorneys as well as Counsel, while Barristers are restricted to the latter office. Again members of the Bar who seek admission to practise in the Courts of this island have to pay a Stamp Duty before they can be admitted to the local Bar whilst the Solicitors appointed Advocates are not required to do this. It is needless to point out that the Advocates under this Act are not bound by those Rules of Etiquette to which Barristers are amenable. They have the privilege of making what terms they think proper with their clients and are in respect of their remuneration untrammelled. It may be remarked that the state of business is hardly sufficient to keep employed the Counsel at present in the island, that the decline in the number of Barristers was attributable solely to this fact and that since the Bill was introduced and before it became Law and before any appointments were made under it, the Bar was recruited by the arrival of two Barristers who immediately commenced practice."[45]

Unassailable in its arguments, the petition nevertheless suffered from two grave defects. Of the petitioners, only one, Mr. Phillip

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44. It is somewhat difficult to see how the Supreme Court arrived at this conclusion from Section 3 of the Law which while permitting an Attorney, Solicitor or Proctor admitted to the rank of Advocate to continue to act as an Attorney etc. expressly provided that "in every case where such Attorney etc. shall be Attorney etc. on the record, he shall be deemed, when acting as Counsel or Advocate, to be in the same situation as other Attorneys etc. on the record, and not acting as Advocate under the first section of this Law."

45. CO137/447/29 Grant to Granville 8/2/1870 (Forwarding Petition of R.I. Walcott, J. C.Stines, Robert Cargill and Phillip Sterns).

Stern, was a practising barrister, and they had all committed a breach of protocol in forwarding their petition directly to the Secretary of State and not through the Governor. "Sent irregularly,"[46] the Colonial Office concluded that the petition "should not be considered,"[46] and there the matter ended, but not for long.

In 1871 Mr. Stern returned to the issue. In a petition to the Governor he made known the impact of Law 45 of 1869 upon him who had been at the time of its enactment the only barrister in practice at the local Bar for as many as four or five years. "All Attorneys can appear and argue before the Judges in Chambers whose jurisdiction in Chambers has been materially enlarged and a great deal of the business formerly arguable only in the Supreme Court by Counsel is now conducted in Chambers, and as a consequence by the Attornies themselves. All Attornies practise in the District Courts and in all the inferior Courts of the island both as Advocate and Attornies in their own cause and when in the District Courts an Attorney desires the aid of a Barrister he is practically prevented having it by reason of there being no provision in those Courts for remunerating him for drawing the Brief, attending on Counsel and the like. Whereas formerly it was the practice in Jamaica, as it is now and always has been in England that the Pleadings filed in the Supreme Court should be signed and drawn by Counsel, now all Attorneys may draw Pleadings. Barristers are not permitted to see clients direct, and

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46. CO137/451: Note of Harold Taylor dated 27/8/1870.

cannot have any business but such as an Attorney gives him."[47]

"The justice of Mr. Stern's claim in respect of barristers actually at the Bar when the Advocates Law was passed appeared indisputable, for there could be no doubt, cæteribus paribus, that an Advocate/Barrister who was also an Attorney had a great advantage over one who was not."[48] His petition now prevailed and Law 36 of 1872, "a Law to allow certain Barristers to practise as Attorneys" was the result. Enacted into Law on the 18th of July it gave to any person who had been admitted and immediately before or within one year after the passing of Law 45 of 1869 was entitled to practise as a Barrister in Jamaica the same right to be admitted an Attorney, Solicitor or Proctor as was by Law 9 of 1869 given to Attorneys, Solicitors or Proctors of the Superior Courts in England or Ireland.[49] Such Barristers admitted as Attornies, Solicitors or Proctors under the Law were to have the same rights and powers and were subject to the same duties and liabilities, including the liability to be struck off the rolls of Attorney, Solicitors or Proctors, as those to which Attornies, Solicitors or Proctors admitted under Law 9 of 1869 were subject.[50] By section 3 admission as an Attorney was not to deprive the Barrister of continuing to act as such as fully as he might have done before such admission but "in any case where such Barrister shall be the Attorney, Solicitor or Proctor on the record, he

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47. CO137/464/155 Grant to Kimberley 9/8/1872 (Forwarding Stern's petition together with the Report of Schalch Attorney General on Law 36 of 1872).
48. Ibid. Observation of Governor Grant.
49. S I.
50. S 2.

shall be deemed, when acting as Counsel, to be in the same situation as other Attorneys, Solicitors and Proctors on the record." There was no fee or stamp duty payable for admission as an Attorney or other legal practitioner under the Law, and though general in its terms, in its application to the practical circumstances of the limited numbers of the Bar, the Law was restricted to Mr. Stern who was the only Barrister able to take advantage of it."[51]

In 1885 a change was effected in the various descriptive terms by which the practitioners in the Superior Court, had been distinguished. Those Courts, with the exception of the Vice-Admiralty Court, had all been consolidated in 1879, and this consolidation had rendered obsolete the retention in practice of the distinctive description of Attorney, solicitor and proctor, but Law 24 of 1879 had been silent on the matter. Section 2 of Law 31 of 1885 removed the casus omissus,"[52]

Two additional Laws in 1896 completed the statutory regulation of the legal profession in the nineteenth century. Law 36 of 1896 "The Solicitors' Law" prepared by the Crown Solicitor and introduced into the Legislature by the elected representative for Manchester, Mr. Palache, laid down the existing framework of regulations respecting training for

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51. CO137/464/155 Grant to Kimberley 9/8/1872 (Observation of Schalch Attorney General).

52. Following the English practice the use of the term "Attorney" was displaced by the less felicitous or appropriate term "Solicitor". See e.g. The Solicitors' Law of 1896. The name "Solicitor" first appeared in the second decade of the fifteenth century in England. He was a kind of land agent who 'solicited' or instigated pleas to defend and increase his master's estates. Alan Harding: A Social History of English Law p.176.

the profession, its organisation and its discipline. The central provision of the Law was the creation of a Committee consisting of the Attorney General, the Crown Solicitor and five practising Solicitors into whose hands were transferred the responsibilities formerly exercised by the Supreme Court Judges under Law 9 of 1869 for setting the preliminary, intermediate and final examinations leading to qualification for admission as a Solicitor of the Supreme Court.[53] As an alternative, it was made lawful for the Governor upon application of the Committee to enter into arrangements with the Incorporated Law Society of England for conducting either the intermediate or final examinations or both, of articled clerks.[54] The Committee also shared responsibility for the maintenance of discipline in the profession and dealt with complaints against members, forwarding their Reports to the Judges of the Supreme Court. Thus was ended a practice which had prevailed whereby informal complaints against Solicitors were informally dealt with by the Judges.[55]

Section 19 of the Law was intended to deal with a hardship of which Solicitors had complained concerning the dual role of Attorney/Advocates and of Mr. Stern, the Barrister/Attorney. "As Solicitors on the record, if these gentlemen briefed themselves and appeared as Counsel they received more on taxation than a Solicitor who was not an Advocate."[56]

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53. S 6.
54. S 13.
55. CO137/573/206 Blake to Chamberlain (Forwarding Report of T.B.Oughton Acting Attorney General on Law 36 of 1896).
56. Ibid.

"Advocates and Barristers occupied an anomalous position, and it was felt that when they were Solicitors on the record they should be that and nothing more; at any rate, so far as costs were concerned."[57] Accordingly, the section provided that whenever any Barrister-at-law or Advocate coming under the provisions of Law 36 of 1872 or of Law 45 of 1869 or otherwise practising as a Solicitor shall in any action or matter be the Solicitor on the record, he shall not be permitted to make any charge or recover any costs or fees which he would not be permitted to make or recover if he were the Solicitor on the record and not such Advocate or Barrister at law."

Solicitors did not, however, long enjoy the benefits of the section which clearly interfered with the vested interests acquired over many years by the Advocates of the colony and by Mr. Stern whose agitation secured its repeal the following year.[58]

Law 39 of 1896 "The Jamaica Bar Regulation Law" was also the creature of Mr. Palache. It recited the desirability that Solicitors admitted in Jamaica should enjoy the same or like privileges in the island as their colleagues in England enjoyed who desired to become

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57. CO137/573/206 Blake to Chamberlain (Forwarding Report of T.B.Oughton Acting Attorney General on Law 36 of 1896).

58. "There were only three Advocates and one Barrister (Stern) possessing the rights referred to. In future under the existing Law no such rights can be acquired and it was not therefore necessary to make such a provision as that contained in the repealed section". CO137/581/186 Blake to Chamberlain (Report of Schooles A.G. on the repealing Law 15/1897.

members of the English Bar. These privileges were embodied in the Consolidated Regulations of the Inns of Court and consisted in the right conferred upon Solicitors in practice for not less than 5 years either in England or any colony or dependency but who in either case was admitted in England, to sit the examinations leading to call to the Bar without keeping terms , provided that before admission to one of the Inns of Court, they had ceased to be Solicitors. Pursuant to this object section 1 of the Law enabled Solicitors of the Supreme Court of ten years' standing and five years' actual practice as well as Resident Magistrates, the Registrar of the Supreme Court or a Clerk of the Court who had held office for not less than five years, to apply to the Judges of the Supreme Court to be enrolled as members of the Jamaica Bar.[59] Before enrolment applicants were required to sit an examination which the Governor was authorised, subject to the approval of the Judges of the Supreme Court, to arrange with the Board of Examiners of the Inns of Court.[60] If successful and otherwise suitable, the applicants' names would be struck from the rolls of Solicitors and placed on a roll to be kept of members of the Jamaica Bar, in which capacity the Law conferred upon them a right of audience as Counsel or Advocates in all Courts of the island with rank and precedence immediately after Barristers-at-law.[61]

Law 39 of 1896 however became a dead letter. "It was introduced

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59. S 1.
60. S 2.
61. S 3.

by Mr. Palache who is a Solicitor and Advocate avowedly in the interest of Mr. Walcott, his brother-in-law, who is a Solicitor and Resident Magistrate and who desires to become a member of the English Bar. As matters stand at present he cannot enter his name as a student until he has first taken his name off the list of Solicitors in which case he would cease to be qualified as a Resident Magistrate, whereas under the provisions of this Law, if he is accepted as a member of the Jamaica Bar, he can enter upon his studentship, obtaining leave for his examinations without forfeiting his appointment, his object being to qualify himself for promotion."[62]

In the view of the Governor "the creation of a class to be called Members of the Jamaica Bar requires very careful consideration, especially as only sixteen Solicitors (including five in the Public Service) out of eighty on the rolls signed the petition in favour of the Bill, ... nor is it necessary in the administration of justice."[63] On the other hand many prominent professional gentlemen, including five Barristers and some Advocates had affixed their signatures to a petition against the Bill,[64] and in the Colonial Office, this piece of nepotic legislation was considered "a bad law tending to degrade the Bar of Jamaica"[65] whilst serious difficulty was apprehended in the probable low standard of the examination which might have been set thereunder.

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62. CO137/573/209 Blake to Chamberlain 16/5/1896.
63. Ibid.
64. Among signatories were Lewis Ashenheim, J.F.Melholland, H.Vendryes and D.Brandon.
65. Comment in Colonial Office on Despatch CO137/573/209 Blake to Chamberlain 16/5/1896.

Within a few months of its enactment the futility of the Law was made manifest. The Judges of the Supreme Court refused to set the examinations which, upon an application by Mr. Walcott on that behalf, they were under a statutory duty to do "in the meantime and until such arrangements can be made with the Board of Examiners of the Inns of Court." "Convinced that it would be impossible (for them) to make an examination prepared and held in Jamaica a real equivalent to that of the Inns of Court," the Judges of the Supreme Court not only desired that arrangements with the Inns of Court be pursued "but would be very glad if Your Excellency should succeed in making it."[66] The Governor, however, met with no success inasmuch as by reason of Regulation 2 of the Consolidated Regulations of the Inns of Court "an applicant for admission to the Jamaica Bar under Law 39 of 1896 must attend in England to be examined."[67] Twelve years later the Council of Legal Education expressed its "inability to concur in the suggestion of the Registrar of the Supreme Court that their examinations of applicants for admission to the Jamaica Bar might be held in the colony"[68] and in 1927 the utter uselessness of the Law was confirmed: "Law 39 of 1896 has practically been a Dead Letter. There are no persons in the Colony who have been admitted to the Jamaica Bar under its provisions, and no such application has been made for many years."[69]

66. CO137/579/42 Blake to Chamberlain (Forwarding letter from the Chief Justice Sir Felding Clarke asking that application be made to the Board of Examiners of the Inns of Court in England to conduct the examination under Section 2 of the Law).
67. See esp. CO137/659/549 Olivier to Elgin 24/4/1907.
68. CO137/663/14 Olivier to Elgin 16/1/1908.
69. CO137/784/321 Stubbs to Amery 22/6/1927.

(B) The Role of the Legal Profession in the legal life of Jamaica - the Pre-Emancipation Period.

It was natural that any persons who made a fair pretence to learning and were articulate would occupy a commanding position in Jamaican society. Such was the legal profession whose influence, exerted indeed throughout the whole fabric of the State, was most dominant in the Assembly and Judiciary.

(i) The Legal Profession and the Assembly: Influence over the Assembly derived from two sources. Firstly, lawyers from earliest times constituted a significant element in it and were often so numerous indeed in the Lower House that simultaneous sittings of that Body and of the Grand (Supreme) Court were not always practicable.[70] Secondly, planters themselves for the greater part,[71] the lawyers' interests in slavery forged a common economic bond between themselves as a class and the planting body over whom they gained by their display or affectation of superior learning and by the fact that they pleaded their causes in the courts of law an almost mesmeric control. By 1731 "they had got such an ascendant over the thoughtless planters that they had the chief influence in that

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70. CO137/13/52 Lawes to CTP 1/9/1718 "by reason of the sitting of the Grand Court, the Speaker being Chief Justice and several of the Judges and Lawyers, Members of the House, it was judged impracticable for them both (the Grand Court and the Assembly) to sit together."

71. CO137/230 Smith to Glenelg 10/11/38 "All the Counsellors with the exception of Mr. Middleton and Mr. MacDougall were Planters."

House to the destruction of public business and all measures for the safety of the island."[72]

Numerous passages in the various petitions and protests by the Assembly throughout the seventeenth, eighteenth and nineteenth centuries against Acts of Imperial intervention in island affairs suggest the lawyers' influence in their formulation, whilst in the legalistic arguments which had formed the firm basis of the consistent demands for compensation upon the abolition of the slave trade and of slavery, the presence of professional leadership can hardly be doubted.

No period more fully demonstrates the influence which the legal profession commanded and exercised in and out the House over the course of events in Jamaica than the fifteen years immediately preceding emancipation.

The year 1823, we recall, was the year in which Canning's eight-point Resolution for the amelioration of slave conditions had been passed. Prominent in that programme of social reform among the slave population was the admission of slave evidence against whites. For fully eight years successive Governors had laboured in vain to secure the passage of a suitable measure, the merits of which were advanced in a most convincing message to the House by Governor Keane in 1828 "The Courts, the judges and juries are of a different class and colour from the proposed witnesses acquainted for the most part with the habits and

72. CO137/53/379 Hunter to Newcastle 8/10/1731.

tendencies of the slave; accustomed to measure his understanding, his moral sense and the accuracy of his perceptions and protected by all these advantages against the danger of an undue influence or impression from his testimony, the proposed privilege goes only to make that testimony admissible but not to make it conclusive ... It will hardly be maintained that the negroes are of so ingenious a turn of mind, so adroit in the fabrication of falsehood and so fertile in resources for supporting it under pressure of a public examination as to baffle the reach of truth more effectually than the practitioners of fraud in the great societies of Europe."[73] On this occasion as before "particularly hostile to the measure of receiving the evidence of slaves"[74] was the King's Advocate General and one of the leading barristers of the day, Edward Panton. Equally opposed to the reform too was Hugo James "in point of professional attainments far beyond any other gentleman at present in the island."[75]

In so far as the failure of apprenticeship was attributable to the inadequacies of its legislative foundations, the seeds of that failure had been carefully sown in the House itself by Mr. Batty, a very prominent member of Assembly and leader of the Bar[76] and by Mr. Richard Barrett,

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73. CO137/167.
74. CO137/163 Manchester to Bathurst 16/5/1826.
75. CO137/167 Keane to Huskisson 9/5/1828.
76. CO137/230 Smith to Glenelg 10/11/38. "Mr. Batty indeed at the instance of the Planters gave and published an opinion (on the Rent issue which arose on the termination of apprenticeship) in favour of the Planters' interests and it is to be remarked he shortly afterwards became insane and is now in a straight waistcoat."

Speaker of the House and Assistant Judge of the Supreme Court. The acuteness of mind of the former lent its aid to the craft of the latter in the production of the Vagrancy and Workhouse Acts of 1834 whose vicious operations against apprentices have already been noted.[77] The local Abolition Act which, without being repugnant to the parent Imperial Statute, had reduced the condition of apprentices below that of slaves, displayed skill in draftsmanship of which only the most acute of legal minds was capable. Significantly, too, it was Mr. Batty who had argued with more professional than moral approbation that the Consolidated Slave Law did not fix medical attendance for the aged and infirm apprentice, Tabitha, as a legal obligation upon her master, Mr. Mason and that "it does not exist as a legal obligation now, though it was the usage of the colony in times of slavery."[78]

Outside the House the influence of Mr. Panton was even more effective than within it, as a Despatch from Governor Smith confirms. "In its consequences (re the eight-hour system of work) the evil spread into the Manchioneal district where the opposition to my endeavours to put it down had been violently and rudely opposed by Mr. Panton, His Majesty's Advocate General who has instituted a prosecution against Mr. Justice Chamberlain, and who in the House of Assembly has endeavoured to get up a party against my government, but hitherto without success."[79]

77. See Chapter 7
78. CO137/219 Account by Richard Hill of the case of R.V.Mason before the Grand Court June 1837.
79. CO137/221 Smith to Glenelg 13/11/1837.

(ii) The Legal Profession and the Judiciary. The ascendancy in point of learning, real or pretended, in the law which those who practised in the courts displayed in the presence of an ignorant lay judiciary early fostered a spirit of disregard by the former for the latter. As early as 1668 "great disorders dayley happened in the respective Courts of Justice ... by reason of the rude and unreasonable interruptions and impertinent disputes of lawyers and Pleaders, not seldom coming drunk into the Court whereby ... the Court ... seemed more like a Horse Fair or a Billingsgate than a Court of Justice, to the great scandal of His Majesty's Government."[80] Unseemly professional behaviour towards the Bench set the pattern of conduct for litigants, witnesses and mere spectators, so that it became necessary to impose the extreme sanctions of a fine and flagellation where "any lawyer or Pleader or any of the Parties or any of the witnesses or other persons that shall presume to come drunken into Court, or if any of the parties aforesaid shall be in an unbecoming rage and passion and give indecent or evill language and revile the Court or any member thereof or any other person whosoever or one another by loose or scandalous language or shall use swearing or blaspheming or beastly expressions in the hearing of the Court."[81]

Measures merely punitive of forensic misconduct failed to promote any widespread respect for the Judiciary whose non-professional status

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80. CO140/1/ 177-180 Council Minutes.
81. CO140/1/ 177-180 Council Minutes.

presented the most formidable obstacle to the attainment of that desirable objective, and "rudeness and want of decorum"[82] on the part of attornies were of every-day occurrence particularly in the petty Courts of the island even in the mid-nineteenth century.

The influence of the legal profession over the Judiciary extended even to the judgments of the Courts. Thus, not every Chief Executive, distracted by the more mundane affairs of State, could find time to devote himself to the intricacies of his office as Chancellor. "Conscious therefore of their own weaknesses they rest themselves on the private opinion of some selfish retainer to law who has cunning enough to turn this absolute control over a Governor's judgment to his own lucre in the course of practice."[83] The practice too, to which the Commissioners of Legal Enquiry and Mr. Justice Ker drew attention, of "decrees and orders affecting large sums of money and valuable landed estates being habitually entered up behind the back and without the knowledge of the Chancellor" (or Vice-Chancellor), could scarce have become established except at the instigation, and doubtlessly without the connivance of solicitors.

In the Superior Courts of Law the ascendancy of the legal profession assumed many forms. In the early eighteenth century the petti-foggers

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82. CO137/366 Statement by Mr. Justice Cargill 1862.
83. Long Op. Cit. Vol. I p.34. "This dependence on some legal friend was very strikingly exhibited in the decrees of an ex-military chancellor who had been a soldier from his youth, always abroad and altogether unacquainted with the language of Westminster Hall. His decrees were drawn up in a style purely legal - they discussed the doctrine of remainder and the law of Dower, and contained legal learning that everyone knew must have been drawn from some professional source." CO137/404 Russell's History of Chancery (1866).

who had poured into the colony, "though ignorant of the law, yet had sufficient knowledge of the Forms as to be able to perplex, delay and confound all business of the Courts by reason whereof the judges and their assistants, ignorant alike of the Law and the Forms, were rendered incapable of righting the disorders which multiplied."[84] In the early nineteenth century matters in this respect had hardly changed. As we have already seen, a Committee of the House in 1809 reported that "it is difficult to gather from our Courts any permanent rule of conduct, that their decisions are often erroneous ... and that the success of the suitor depends in general less on the merits of the cause, than on the skill and address of his advocate."[85]

More effective than his advocacy over the rulings and decisions of the Courts was the influence of the economic interests by which the planter/Counsellor and planter/judge were inextricably bound. Adjournments of cases, by which an adversary's resources were readily exhausted and his witnesses worn out by frequent and fruitless attendances at Court, were of general occurrence, and we have seen how in the times of the Apprenticeship system adjournments had been employed with ruinous effect upon stipendiary justices. A letter of Mr. Anderson, Solicitor for Mr. Oldrey Stipendiary justices and defendant in the notorious case of Mason v Oldrey is in this connection most revealing. "It was

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84. Plantation Justice.
85. CO140/96 p.235. See Chapter 6.

grievous to see the poor creatures, Evadne Smith, Sarah Anderson and Belsey Blackman (witnesses of Oldrey) - one of them in the last state of pregnancy - and another with an infant in her arm - and the third, a sick woman all alone - all travelling from St. Elizabeth to Spanish Town (a distance of 100 miles) and forced to return without accomplishing the business. But this is quite Jamaica Style. You may tell all who care for the civilisation of this colony that little will be done until Justice shall permeate the whole length and breadth of it - I mean speedy and easily acceptable justice."[86]

The readiness with which adjournments were sought and the facility with which they were granted had a particular consequence which was grievous to legal administration. An attitude of dilatoriness to business was fostered which tended to maintain the work of the Court in a perpetual state of arrears, and unnecessarily to increase the cost of the judicial establishment.

Dominance over the Judiciary and general forensic mis-conduct were however only part of that blight by which the legal profession was vitiated. "Chicanery of the lawyers" had been a complaint almost as old as civil government itself. In 1816 public clamour could no longer be ignored and a Committee of the House appointed "to take into consideration the state of the fees and emoluments at present taken and enjoyed by the solicitors in Chancery, attornies at law and proctors of the several courts

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86. CO137/224 Mr. Anderson to Oldrey 9/3/1837.

of this island"[87] reported that "the statute of the 10th year of Her late Majesty Queen Anne C4 is the last enactment made to regulate the fees of the lawyers, but that the said statute, although remaining in full force, has not been adhered to by them inasmuch as their charges, by all the bills of costs brought before the Committee and other most decided personal evidence, are and have been for a long time past made without any respect to the said statute and in almost every item exceed them in amount and are multiplied to an enormous extent."[88] At the same time the Clerk of the Court of Errors testified that "Solicitors were in the habit of charging for work they have not done and also for unnecessary work that they had done,"[89] and that it had become necessary to check abuses incident to the employment in cases of a multiplicity of Counsel by an Order of the Court "allowing only two Counsel on one side."[90]

The House came to the conclusion that "many of the present charges go far beyond all liberal bounds and called for the regulations of legislative interference" and a Law was passed for regulating the fees of the attornies and solicitors and proctors of the several courts."[91] "The rigid definition of the fees and salaries was more effectual however, to confirm the right, than to prevent the abuse. Insufficient remedies followed with distant and tardy steps the rapid progress of the evil and the crowd of legal patriots which immediately rushed into the Senate and filled all its vacant benches preserved the interest of the law from

87. Volume 13 of the Journals of the House of Assembly (1816-1822) p.47.
88. Ibid.
89. Ibid. p. 123.
90. Ibid. p.123.
91. Ibid.

further encroachment at the expense of the country and perhaps the Constitution." [92]

(xix) The Post-Emancipation Period.

The post-emancipation career of the legal profession was set against the background of two significant phenomena, namely, the decline on the one hand of the Bar as well as the simultaneous rise to prominence on the other hand of the Solicitors' Branch of the profession, and the rapid growth of an independent and Judiciary.

Cultivated for almost two hundred years in the indolent and corrupting climate of slavery, the career of the legal profession in this period may almost be described as the reaction of inveterate attitudes and ethos to these phenomena.

(i) The decline of the Bar and the rise of the Solicitors' Branch of the Profession. In 1840 there were twelve practising barristers on the rolls of barristers of Jamaica, but of these, six were then in England, of whom five were never to return to the island. Two factors of a rather permanent nature tended to a progressive decline in the numerical strength of the Bar. First, business in the Supreme and Assize Courts had decreased by reason of the augmentation in 1841 of the jurisdiction of the Court of Common Pleas from £20 to £30, thereby drawing off from the former Courts a not inconsiderable measure of business which had

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92. Bridges Op.Cit. Vol.2. p.318.

engaged the services of Counsel. The conferment too upon the Courts of Quarter Sessions of increased jurisdiction in larceny in 1837 meant that a great bulk of the criminal business hitherto disposed of in the Superior Courts of the Counties in which Counsel alone appeared then found their way into the Courts of Quarter Sessions in which only attornies practised. The effect of this tendency in the post-emancipation era to increase the jurisdiction of the intermediate, at the expense of the Superior, Courts was to foster the growth of the lower branch of the profession, and to accelerate the decline of the Bar.

The other factor which tended to promote the development of one branch of the profession at the expense of the other was the relative costs of becoming a member of either. "No Barrister could be admitted to the Jamaica Bar who had not been personally called to the Bar in England."[93] Thus one who wished to read for the Bar had to betake himself to England and there from his own resources maintain himself and pursue his studies to a successful conclusion in a minimum period of three years. This outlay, if at all realisable, was extensive, and not unnaturally successful candidates tarried indefinitely in England where the returns upon their investments were likely to be more immediate and gratifying. On the other hand the situation of the Jamaican articled clerk and Solicitor was far more favourable. The Jamaican articled clerk

93. CO137/248 Metcalfe to Russell 15/4/1840. By "Jamaica Bar" is meant here of course "practise as a Barrister at the local Bar" and had nothing to do with the "Jamaica Bar" created by the Law of 1896.

received a liberal salary from the second or third year of his apprenticeship.[94] As his articleship lasted for five years he was therefore in receipt of remunerations for as many as three or four of the five years of his studentship. Again until 1869 the provisions in respect of qualifying examinations were of a most inadequate nature and consequently qualifying as an attorney or solicitor was by far an easier task than qualifying as a Barrister. Exceptionally, too, as we have seen,[95] influential persons could even procure the enactment of special legislation to meet the case of favoured individuals. No such privilege was available in the case of the prospective barrister. Finally upon qualifying, the young attorney, unlike the young barrister, paid no premium or heavy stamp duty for the privilege of starting a career.

These two factors were from the 1840's onwards sharpened by the ever worsening economic conditions and in "the general poverty of the island which naturally reduced the profits of the legal profession"[96] as a whole, the branch of it more exposed to hardships suffered more.

The re-organisation of the legal system in 1856 struck another crushing blow at the Bar. The entire intermediate judicial system had been abolished, as we have seen, by the Judicial Amendment Act 1855, and from the Circuit Courts in which the work of the abolished Courts were thereafter to be done "Barristers were necessarily excluded" to make

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94. CO137/224 Robert Russell to Glenelg 10/5/1837.
95. Supra. 96. CO137/275 Elgin to Stanley 3/4/1843.

room for the attornies. That organisation we also saw "enhanced the gains of the old established legal firms of Spanish Town and Kingston through whose agency all suits had to be conducted."[97]

Described in 1843 as "comprising ... many young men of very considerable attainments,"[98] the local Bar not surprisingly was within the succeeding seventeen years reduced to two and "there was no prospect of any augmentation of its active strength."[99]

The re-establishment in 1868 of an intermediate judicial system in the form of the District Courts did not enhance the prospects of the Bar. On the one hand the extensive jurisdiction of those courts which discharged 99/100th of the judicial business of the island[100] left only an insignificant amount of work for the Supreme Court to do. On the other hand, as the table of fees in the District Courts provided no remunerations to attornies for briefing Counsel and the like in those Courts, there was no encouragement to their engagements in these intermediate Courts. So injurious to the interests of justice was the situation in 1869 when, as we have seen, there were only two practising barristers available for legal representation in the Superior Courts that it led to the enactment of Law 45 of 1869 "a Law to allow attorneys to practise as Counsel in certain cases."

With the enactment of this Law, the eclipse of the Bar by attorneys

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97. CO137/330 Barkly to Labouchere 8/2/1856.
98. CO137/245 Elgin to Stanley 3/4/1843.
99. CO137/349 Darling to Newcastle 24/4/1860.
100. CO137/459/179 Grant to Kimberley 9/12/1871.

and solicitors was almost made complete. Scarcely benefited by the limited provisions of Law 36 of 1872, the local Bar consisted in the period between 1869 to 1887 only of the Attorney General and one or two barristers and about half a dozen advocates, and in 1884 a District Court Judge observed "It is unfortunate for Jamaica that it possesses no Bar but as a substitute a body of Advocates who are attornies in reality with attorney's objects and attorney's aims."[101]

Only towards the close of the nineteenth century did the strength of the Bar show signs of improving. In 1887, the year of enactment of the Resident Magistrates' Law, members of the English Bar began returning to the island and in 1896 the Attorney General reported that "there are now seven members of the English Bar here (not including the Attorney General) and no Advocates have been created since 1885 as there has been no necessity to do so."[102]

By contrast the lower Branch of the profession seemed at no time to have been insufficient in numbers for the needs of the community.[103] Since 1827 when their roll stood at 88,[104] their numbers, though declining, had done so at a far slower pace, and had begun to rise again in the 1880's. In 1881 57 Solicitors were in practice, of whom three were off the island.

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101. CO137/518/384 Norman to Derby 16/9/1884 (Forwarding views of Mr. Gibbons, District Court Judge).
102. CO137/573/209 Blake to Chamberlain 16/5/1896 (Forwarding comments of T.B.Oughton, Acting Attorney General).
103. In 1787 there were already over 60 attornies See Re Montifiori 31/8/1787 Grant's (Jamaica) Report.
104. See Report of Commissioners of Legal Enquiry Op. Cit. pp.278-9. There were then 19 Barristers on the list.

In 1883 the number on the roll was 59. In the succeeding thirteen years that figure was augmented by 19 and in 1900 the profession could boast of 97 members, a figure almost fourteen times larger than the number of barristers in private practice.

(ii) The growth of an Independent Judiciary. The ascendancy of the Solicitors' Branch of the profession over the Bar occurred over a period of time during which an equally significant development was taking place on the Bench of the Superior Courts of Law and Equity. Breaking away from their past, these Courts were rapidly taking unto themselves the image and attributes of an independent Judiciary. The provisions of the Judicial Act of 1840 which limited appointments to the Vice-Chancellorship and to the Supreme Court Bench to members of the Bar and decreed their entire separation from political and secular offices greatly facilitated this development, to which glowing tribute was paid by the Governor as early as 1849: "Of the administration of justice in Jamaica I would say generally that the uprightness of the Judges is unquestioned and unquestionable ... and that everything which distinguishes a British Colony formed on the constitutional model of the parent country from a plantation or a commercial settlement or mere factory depends upon the maintenance of the judicial tribunals and the magistracy of the island in their integrity."[105]

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105. CO137/302 Grey to Earl Grey 12/2/1849. (Report on the State of the Island.)

(iii) Reaction of the legal profession to these phenomena. The notion of an independent and professional Judiciary was as alien to the traditions of the legal profession as it was to the planter class and in Chapter 10 we saw that whilst tribute was being paid in 1849 to the Judiciary, the Seven Years' War had already been two years in progress. Apart from representatives of the Planters and Coloured Parties who composed the majority and some seven or eight Jews, the rest of the membership of the Assembly by whom that War was begun and sustained were "almost all practising lawyers" and "one of the many untoward circumstances connected with the incarceration of Mr. Justice Stevenson was that one of the members of the Assembly by whose votes he was committed was a Junior Barrister and two others were practising Attornies of the Supreme Court in which he sat." [106]

The confrontation between the Judiciary and the legal profession extended down to the Rebellion and beyond. The proposals in 1854 for the guarantee of a loan not exceeding £50,000 for the purpose of providing proper compensation for those public servants whose interests would be affected by abolition of their offices consequent upon the proposed re-modelling of the public institutions were at first favourably reported upon, and the Report of the Select Committee in regard to the Judicial Establishment, in which extensive reductions were to take place, recommended

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106. C0137/316 Grey to Newcastle 9/4/1853.

such reductions upon the principle of compensation and a reference to the Committee of Finance to prepare a Bill accordingly. Subsequent events, however, as narrated by the Governor, revealed the part played by legal members to undermine the principle of judicial independence. "That report when presented by the Chairman, was ordered to 'lie on the Table'"and the Votes of Assembly contain no further allusion to it and afford no explanation of the causes which led to the substitution for it nearly 3 months later of another Report proceeding on the totally opposite principle of deferring reduction either in number or emolument until the occurrence of vacancies and proposing far slighter modification in the existing system of administering the law. It will be found however that on the 2nd of February 1854 six members were added by the House to the Select Committee, the name of Mr. Jackson by whom the Second Report was handed in, standing foremost, followed by three other lawyers - an addition which throws much light on the rejection of the first Report, but which was not effected without an animated discussion in which the principle of compensation was altogether repudiated by a majority of the speakers."[105]

The structure of the re-modelled judiciary of 1856 has been the subject of earlier analysis and the aim of the lawyers in removing the intermediate judiciary has been noted. "The design of the Executive Committee to bring not only Law, but cheap Law to every man's door was

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105. CO137/327 Barkly to Russell 8/8/1855.

frustrated"[106] but "it was quite impossible for them to withstand the influence brought to bear upon the question"[107] by the legal members of the Assembly.

This victory of the legal profession, of which the remodelled legal system of 1856 was the fruit, intensified the confrontation with the Judiciary. First, the Supreme Court Bench itself became the objective of Solicitors by whom all professional practice was now engrossed and in 1858 Darling's proposals to enlarge qualifications for appointment to the Supreme Court by including members of the West Indian Bar met with general disapproval "in a House in which were no less than six solicitors, a branch of the legal profession in which a strong expectation prevails that under pressure of circumstances the Bench will be ultimately thrown open to its members."[108] Next, as the whole legal business of the country fell into their hands, the monopoly enabled solicitors to impose whatever charges they chose upon litigants and "excessive and unreasonable costs and delays in legal proceedings ... undoubtedly became oppressive in the extreme."[109]

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106. CO137/330 Barkly to Lebouchere 8/2/1856.
107. Ibid.
108. CO137/338 Darling to Lytton 20/7/1858.
109. CO137/391/149 Eyre to Cardwell 20/6/1865 (Mr. Justice Ker's views) In 1868 an aggrieved suitor in a letter implored District Court Judge Rampini to "lay the subject before His Excellency the Governor so that some protection may be afforded against the machinations of unprincipled lawyers who ... are so plentiful in Spanish Town and Kingston and are the bane of the population." CO137/441 Harrison to Rampiri 17/3/1868. Two years before the Rebellion the Appeal Regulation Amendment Act, unanimously passed by a House a quarter of which membership was composed of solicitors increased the already oppressive tax on negro redress by 25% to 80%.

Thirdly, the new judicial system for the first time in the history of the colony brought Supreme Court Judges into direct daily contact in the Circuit Courts with the lower branch of the profession. That contact degenerated rapidly into conflict as an independent and learned Judiciary exposed, censured and punished indecorous behaviour, sharp practices, delays and extortions of the profession, and we have seen how Solicitors carried that conflict from the Court Houses to the House of Assembly in vain efforts to "impeach" Mr. Justice Cargill.

Post-rebellion reforms in the legal system did not allay the alienation which divided the Judiciary and the legal profession. The latter continued to be dominated by the lower Branch whose practice in the District Courts, as we have seen, was rendered almost exclusive. Two particular grievances against these Courts in the years immediately preceding their abolition must in this context, therefore, engage attention. The first related to the frequency with which adjournments were granted and the attendant delays in the despatch of legal business. This the Chief Justice and Mr. Justice Curran attributed not to the inability of the District Court Judges to overtake their work but to "the weakness of some judges in acceding to motions for adjournments."[110] More to the point however were the observations of Mr. Justice Ker: "Practitioners arranged among themselves for delays and postponements, the object being

110. CO137/518/384 Norman to Derby 16/9/1884 (Forwarding views of Chief Justice Gib-Ellis and Mr. Justice Curran).

to swell costs and water the fee crop of the abolished clerks of the peace"[111] and "timid judges fearful of offending them and in order to get on quietly with the practitioners weekly and inexcusably granted them."[111] The second grievance was the high cost of professional charges and the manner of their collection. "Law in Jamaica was considered a ready money transaction"[112] and solicitors demanded payment in advance in a lump sum of all their charges, a system "unjust and unexpedient."[113] In short, the gravamen of the agitation led in 1884 by the legal profession against the District Courts, namely their delays and high costs, was in no small measure the product of the mal-practice of the profession itself.[114] The traditional dilatoriness of the lawyers[115] had vitiated, and occasioned the very abolition of the intermediate judiciary.

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111. CO137/518/384 Norman to Derby 16/9/1884 (Forwarding comments of Mr. Justice Ker).
112. CO137/224 Oldrey to Glenelg 28/4/1837.
113. CO137/518/384 Norman to Derby 16/9/1884 (Views of Mr. Justice Ker).
114. See Chapter 17.
115. CO137/479/82 Grey to Carnarvon 21/4/1875 (Forwarding Report and Comment of Mr. Justice Ker upon complaint of his refusal to grant an adjournment of a case in order to allow a defendant "to get a new Counsel in place of Mr. Advocate Lindo who had not returned the fees when he accepted office as Assistant Attorney General." "I at once refused the application. I regret to say that applications of this nature are, owing to the dilatoriness which characterises the legal profession in Jamaica, among the practices which the Judges are habitually called upon to check. There had been ample time to secure the services of Counsel."

Pursuant to the constitutional changes of 1884, solicitors returned in such strength to the Legislature that it was remarked that "there seems to be a strong notion prevailing among the elected members of Council that Jamaica's salvation is to be worked out by her Solicitors."[116] In so far as the legal system was concerned their plan of salvation had included the elimination of the intermediate judicial system, a return to the legal fabric of the pre-rebellion era, the prescription of judicial salaries at so low a level as to have manifested an utter disregard for the status and importance of the offices and the non-provision of a Civil List by which such salaries, even though inadequate, might have been secured from their annual review.

The circumstances in which they capitulated in the Council on the first matter have already been examined and it has also been noticed that although a Civil List Law was eventually enacted in 1895, its provisions in respect of salaries for the Judges of the Supreme Court fell short of the stipends of which existing incumbents were then in receipt, and so like their colleagues in the Assembly forty years earlier "by a partial provision or a defective security for judicial salaries they had left the principle of maintaining the independence of the Judges unestablished."[117]

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116. CO137/531 Hocking to Norman 1/6/1887 (Report of Attorney General on Law 17 of 1887, the first "unproclaimed" Resident Magistrates' Law. In the Colonial Office the ascendancy of the Solicitors in the Council received this unflattering comment: "This Council of solicitors and doubtful merchants is not the happy birth we had hoped for." CO137/534 Norman to Holland 14/1/1888 (Colonial Office comment on Norman's Despatch).

117. CO137/323 Newcastle to Barkly July 1854. See Chapter 10

As was the case with so many other Jamaica institutions, slavery had left its blight upon the legal profession. Long accustomed to a weak and pliant judiciary, it was only after fierce opposition that it yielded a grudging and tardy recognition to the notion of judicial independence. In the result the protracted and unseemly contest so debased the image of the Judiciary as to have bequeathed to the public generally and to the legal profession in particular no strong and robust appreciation of the vital role in the life of the State, nor of the status[118] which the Judges should enjoy.

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118. For an example of the failure to accord Judges with special privileges to allow them privacy to discharge their functions free of pressure and influences see CO137/626/117 Hemming to Chamberlain 11/3/1902 (Forwarding Memorandum of the Chief Justice concerning hardships experienced on Circuit through lack of private quarters).

PART VI

Conclusion

CHAPTER XXI

Conclusion

From this account of Jamaica's legal system it is possible to see the extent to which its legal institutions were moulded by the history of its society, its economics and its political evolution, and to see too the overwhelming difficulties facing a society trying by 1900 to throw clear the constraints imposed by that history.

It is not necessary to recount once more the impact upon the legal system of the slave society and its aftermath, of Jamaica's status as a colony far removed geographically and often politically from the centre of imperial power, of legislators, judiciary and legal practitioners committed either to the use of the law as an instrument for the entrenchment of their minority interests, or to the use of their offices, in times of irresistible social change, as bastions for the preservation of diminishing power. It is regretted, however, that this work must end only a generation or so after the most far-reaching re-constitution of the legal system. How the Crown Colony Government dealt with the engrained attitudes of Jamaica society, what peculiar influences it brought to bear upon the legal institutions of the country and upon those values by which they were inspired, how far too

independent Jamaica has succeeded to institutions still shaped by its slave past and its more recent colonial past, and to what extent such inherited characteristics affect the administration of justice today - these and more are questions which remain to be answered fully elsewhere.

History, however, is more than a record of the past: it is also a guide for the present and a bridge to the future, and it is by looking back to the experiences of that history that the Jamaica of today and tomorrow can observe the pitfalls to be avoided, and, at least in part, how they might be avoided.

The Legal System

Even a cursory glance at the present legal system suggests that some of these historical influences remain strong, but, perhaps more disturbingly, that the lessons of the past have still to be learned.

As in 1834 upon emancipation from slavery, so in 1962, upon emancipation from colonial rule, judicial business experienced tremendous upsurge. Comparisons are not always odious, nor do statistics always over-dramatise. In 1903 a Chief Justice and two Puisne Judges discharged all the original and appellate work of the Supreme Court. That year their principal judicial workload consisted of 83 Common Law Cases and 6 suits in Equity. Statistics for the last nine years, as the Table shows, demonstrate an increase on the average of 22 times the amount of judicial work in 1903.

Civil Cases filed in the Supreme Court	
Year	Nos.
1959	1467
1960	1562
1961	2682
1962	3170
1963	2646
1964	1991
1965	2200
1966	2201
1967	1952

The present complement of the Appeal Court is 7, and of the Supreme Court 12.[1] Thus the rate of increase of judicial personnel has not kept pace with the rate of growth of judicial work, and there is danger that mounting arrears of civil business will today as in the past impede commerce, disappoint the expectations of suitors and cause grievances to fester.

It has been on grounds of economy so-called that the legal

1. Including a Master appointed in 1966. See The Judicature (Miscellaneous Provisions) Act 29 of 1966.

system has at crucially difficult periods in the past been made the object of retrenchment and restriction. Of such policies not only litigants but the whole society have reaped the bitter fruits, yet the current approach to similar difficulties occasions doubts whether the importance of an efficient, effective and accessible legal system to economic progress and to the peace and order of society - so evident in the 19th century - is yet fully appreciated.

Priority which the lawyer ascribes to expenditure upon the legal system may be exposed to the criticism of special pleading, but the history here recounted would seem to suggest that the legal system in fact justifies a far higher priority than even the lawyer would accord. Courts or their Officers which are too distant, too expensive, too tardy and too inefficient for want of resources or for want of quality in their personnel have in the past aroused intense popular reaction in Jamaica. There is no reason to think that in this respect circumstances have greatly changed.

But even if, in the face of high costs, some restriction attendant upon increase of judicial and other personnel must be accepted there may be reason to doubt whether all modernisation of the legal system with a view to rendering it more efficient and satisfactory must necessarily be inhibited. It may for example be considered whether existing procedures and practices, long out-moded since their establishment in 1887 by the revolutionary changes of the 20th century, are not now ready for drastic overhaul. In 1884

Mr. Justice Ker saw fit to urge (a) "the abolition of pleadings in the Supreme Court and the trial of cases as they are tried in the District Courts here and in the County Courts in England upon summons only",[2] and (b) "the abolition to a large extent of juries, that institution working worse and worse everyday".[3] Should these recommendations of an eminent Jamaica Judge and ardent law reformer not be resurrected in 1968 and examined with posthumous respect?

In the field of the criminal law existing facilities for the trial of cases as well as the administrative and ministerial machinery associated therewith have recently excited strong judicial criticism: "Arrangements for bringing on cases for trial are working in a most unsatisfactory manner. Obvious also to any perceptive person of experience who is conversant with the state of affairs ... is the threat that if the situation is allowed to continue, what is now a mere crisis will shortly assume the proportions of disaster as the work of the Courts flounders towards chaos in morass compounded of deficiencies, procrastination and ineptitude".[4]

Here also existing practices and procedures may well undergo scrutiny with a view to the elimination of unnecessary delays,

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2. CO137/518/384 Norman to Derby 16/9/1884 (Forwarding views of Mr. Justice Ker on the Judiciary.

3. Ibid.

4. The Daily Gleaner, 15/1/1968.

duplication of functions, and the waste of money, time and human resources. Perhaps there are today stronger grounds than there were almost a century ago for the contention "in favour of dispensing with preliminary magisterial inquiries in the case of indictable offences and giving the Parochial Judges full liberty to refer the case at any point up to the close of the case for the prosecution to the Circuit Courts".[5]

The Judiciary

Whilst judicial labours have increased, so too have their nature and importance. Fundamental rights and freedoms have been incorporated in the 1962 Constitution and their enforcement may be invoked by means of special constitutional provisions. Such rights and freedoms, whilst retaining their original common law characteristics, have now acquired a distinctive constitutional sanctity and a heavy burden imposes itself upon the judiciary to safeguard these peculiar privileges. Guardians of these freedoms, the judges also exercise the unprecedented power of pronouncing upon the constitutionality of legislative enactments.

It is likely that the impact of these developments upon the Judiciary and upon its future role in society which is far-reaching has not been sufficiently appreciated. The consequential

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5. CO.137/525/37 Clarke O.A.G. to Granrelli, 5/2/1886. (Forwarding Report of Local Royal Commissioners).

juxtaposition of Legislature and Judiciary recalls the lessons of Jamaica's sombre slave past in all their poignancy. Traditional problems of training for and recruitment to the Bench acquire keener significance, and even more critical than in the past is the need for an independent Judiciary guaranteed not merely by the letter of written constitutional safeguards, but by a general recognition of its central importance.

The essential character too of the judicial office and the qualities imperatively demanded of its incumbents acquire greater emphasis. "In large communities such as that of England ... the judge is an abstract idea to the mass of the people who seek aid of the courts and to him they are strangers. It is however one of the difficulties attached to the administration of justice in a small community ... that a judge knows and is known by most people forming that community. The man he meets today in friendship may possibly appear before him on the morrow. As much as possible and as far as is consistent with conventional social obligations, restriction of the number of judicial acquaintances becomes necessary".[6] Some fifty years later these observations of a colonial judge received strong affirmation: "The service which a judge renders requires the highest qualities of learning, training and character ... A judge lives a more restricted life than other

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6. Observations of Mr. Justice Swan of Trinidad 1910. See Farjan V. de Wolf (1910), Trinidad Royal Gazette 2433. See also "English Law and Administration of Law in the West Indies" by K.W. Patchett, p.80.

people. Additional sources of income which are open to many men in salaried occupations are denied to a judge ... He must be circumspect in the friends which he makes and the hospitality which he receives, lest he should find his impartiality subconsciously undermined. His is a dedicated life. Much is required of him and, with the present cost of living, the salary now offered is still inadequate for the post".[7] Today, having regard to all his weighty constitutional responsibilities, both these observations apply with redoubled force to the Jamaica Judiciary.

If fundamental freedoms of the Constitution are to appear to have the value their entrenchment would imply, and if the sanctity of the Constitution, the Charter of Jamaica's liberty, is to appear to be preserved from unconstitutional legislative encroachments, it is suggested that the overall status of the judges, their guardians, should become a matter of studied enhancement. Of proper methods to this end events out of Jamaica's past, by no means deficient in instances of deliberate judicial denigration, furnish abundant contrasting examples.

The Legal Profession

"Most West Indian barristers have no qualification other than

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7. Napier Committee Report on System of Administration of Justice in Trinidad (1956). The salary of the Chief Justice was then £2,800, that of the judges £2,000.
See also "English Law and Administration of Law in the West Indies" by K.W. Patchett, p.80.

that of having been called to the Bar by one of the Inns of Court in London",[8] and "solicitors trained in the West Indies have the benefit of no institutional training whatever".[9] The legal system, however, is being seen today as one making impact at innumerable points with the everyday concerns of ordinary people. Whether, therefore, the legal profession is equipped to meet the needs of contemporary society is a question of no small importance, to which the lawyer's role, no less than the judge's in defence of constitutional rights has given greater poignancy.

Against this background conventional curricula seem neither sufficiently broadly based nor adequately regionally orientated. It has been recently observed that the training of the West Indian lawyer "should include courses in Caribbean History and Institutions and other courses drawn from the liberal arts curriculum such as economics, political science and government, sociology and history courses".[10] Distinctive characteristics of written constitutions upon which the polity of emerging West Indian nations are founded render training in this particular field a sine qua non, and past history would suggest that a central feature of any future training for the profession should be a concentration of emphasis upon the

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8. Report of Committee on Legal Education of the Council of the University of the West Indies (1965). Reprint May 1966, p.5.

9. Ibid.

10. Ibid., p.12.

social responsibilities of lawyers in society. It is a point which cannot be too often stressed that the legal profession exists for society and not society for the legal profession.

Law

"Law is the expression of social needs and a system of law is a description of the society for which it is made".[11]

This truism has three points of relevance for Jamaica. First, Jamaica, as other territories in the West Indies, adapted institutions, legal rules, practices and procedures closely modelled upon English counterpart, and many of the values with which they are infused are similarly derived. For all that, "the circumstances and social characteristics of Jamaica differ greatly, however, from those of England ... and the population here is composed of people of different races and colours".[12] The man on the Christiana Express is not the same as the man on the Clapham Omnibus, and differences so far outweigh similarities between them both that it is true to say that "Jamaica is in all respects as different from England as two places can well be".[13]

These differences are profound and they inhere in the powerful influence of slavery upon Jamaica's social structure, upon

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11. Harding, op. cit., p.7.

12. Sir John Peter Grant in the Legislative Council on the Bill for the Abolition of Grand Juries. Jamaica Gazette, 22/6/1871.

13. Ibid.

social and political attitudes as well as in its impact upon attitudes towards law and the legal system. It is upon a full recognition of these differences that the improvement and refinement of law in Jamaica must depend for its efficacy as a satisfactory expression of the needs of the society for which it is made.

Next, Jamaica's laws and institutions must protect the interests and claims of the maximum number of the society. An expectation that the law and the courts should be for the "man in the rum shop" as for the "man in the Great House" became evident after emancipation and, as we have seen, failure to fulfil that expectation was in no small way a contributory factor in the destruction of the Jamaica of 1865. Today the Jamaica Constitution with its Bill of Rights has once more emphasized that expectation. The lesson of history needs no repetition.

Lastly, Jamaica's laws and institutions must not inhibit the development of desirable social objectives. "Like all other human institutions, law is ambulatory and in constant state of progress and change. New events, new conjunctions, new combination of circumstances, the lessons of experience point out to the law-giver the necessity of altering the work of the past to adapt it to the present".[14] The happy precedent to which the lawyer hastens with

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14. His Honour Mr. Bruce, District Court Judge in R.V. Royes. See CO.137/471/102 Grant to Kimberley, 9/6/1873. See also observation of C.J. Barrett-Lennard in WEST V. REID Adrian Clark's Report 1917-32, p.255. "It is his (a judge's) office to play a primary part in the orderly administration of the country in which he may exercise jurisdiction".

delight imparts certainty and predictability to the law and these in turn provide solid foundations for society. Yet change and revolution are essential characteristics of 20th century society and law which fails either to keep pace with current social expectations, or to exert a formative influence over current social values, lies in danger of social contempt. It must hold the mirror up to the ever-changing conditions of society, and thus is emphasized how great is the duty upon those who are concerned with its promulgation, as well as with its interpretation and application from day to day to strive continuously to refurbish its image, to keep it bright, and to subject it to constant re-analysis so as to keep it in touch with social realities. In short, "Law, like the traveller, must be ready for tomorrow. It must have a principle of growth".[15]

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15. Mr. Justice Cardoza. See Dennis Lloyd, The Idea of Law (1964), p.14.

APPENDIX A

(See Chapter 5 Note 27)

The draft of an Act prepared by my Lord Keeper declaring the laws of England in force was read and noted to be entered into the Journal as followeth:

"Jamaica"

"Draft of an Act prepared by my Lord Keeper declaring the Laws of England in force".

"It is hereby enacted and ordained by the authority aforesaid, that all and every judge, judges and justices, within the said island, shall try and adjudge all matter concerning titles of land, and property of goods, and all real, personal and mixed actions and all matters of treason, felony and petty larceny and piracy according to the laws and statutes of the Kingdom of England which are hereby enacted to have full force in the said island, concerning all the said matters, except only in such cases where it shall be otherwise provided by any law made or to be made within this island.

"And that the judges of the Chancery, Admiralty and other Courts shall try and adjudge all matters according to the laws of the Kingdom of England, concerning the jurisdiction of the said Courts, and the statutes there made concerning the same (except as before)".

APPENDIX B

(See Chapter 15 Note 82)

The sections, extending quite beyond any power given by the Imperial Acts 23 and 24 VC 122, were immediately impugned by the Secretary of State. CO 137/380 Newcastle to Eyre 16/5/1864 "I should at once have submitted these Acts for her Majesty's sanction but the Legislature appears inadvertently to have transferred to their enactment from the English Acts of Parliament certain provisions which are in excess of the powers conferred upon Colonial Legisaltures. It is provided by section 57 of Cap. 32, by section 97 of Cap. 33 and by section 60 of Cap.34 that certain Acts shall be subject to certain penalties if committed within the limits of the jurisdiction of the Vice-Admiralty Court of Jamaica. But the jurisdiction of the Vice-Admiralty Court (which is an Imperial Court) extends to the high seas and therefore extends beyond the jurisdiction of the Colonial Legislature which has no power of legislation over the high seas. I must therefore request that you propose to the Jamaica Legislature the repeal of these three clauses and when the Acts shall have been so amended I shall be ready to submit them to Her Majesty in Council for approval."

In reply the Chief Justice, Sir Bryan Edwards disclaimed on behalf of the Legislature "any desire to usurp an authority or to confer upon the Courts of Justice a jurisdiction which neither of them ought to possess" but "the Imperial Statute 12 and 13 VC 96 was considered to fall

short by not providing for the trial of offences committed in part only or not completed on the high seas, or committed in part only on land, wherefore Imperial Statute 23 and 24 VC 122 was passed. Such provisions existing in the Imperial Statute Book it was not considered an encroachment to embody similar provisions in the three Jamaica Acts. If the offending sections in the local Acts are removed trials of the offences would still continue in the Colonial Courts but objections to their jurisdiction would be raised and - irrespective of the results - to great expense and delay."

On 30/9/1864 Cardwell to Eyre (CO 137/384) "The Imperial Act does not give the Legislature of Jamaica any jurisdiction in respect of any such offences (as the Jamaica Acts provided for) and the question is whether it is not incorrect that the Legislature of Jamaica should assume to give what it has not authority to give though it is in point of fact already given by an Imperial Statute. It appears to me that ..... the three clauses, 57 of Cap. 32, 97 of Cap. 33 and 60 of Cap. 34 should be repealed."

Not appearing in any existing Jamaica Law, the sections were apparently repealed at a subsequent date, but it is questionable whether that portion of section 8 of Cap. 268 of the Revised Laws (1953) of Jamaica is not ultra vires which purports to confer a local jurisdiction to hear and determine offences begun upon the sea and terminating in death "in this island". See also the unreported case of R. v. Kenneth Campbell (1963)

who, having wounded Wesley Rae on a British Ship on the high seas, was brought to Jamaica for trial on a charge of murder, Roe having died at Bermuda.

APPENDIX C

(See Chapter 16 Note 18)

Inasmuch as the Jamaica Act 21 G 3 C 25 was said to have superseded the Imperial Act 22 G 3 C 75 (Burke's Act), it was styled by Governor Darling "the Colonial Charter of Justice", CO 137/365 Darling to Newcastle 9/3/1862.

The Jamaica and English Acts were in the order of their enactment as follows: (i) Jamaica Act 21 G 3 C 25 (1781), (ii) English Act 22 G 3 C 75 (1782), (iii) English Act 54 G 3 C 61 (1814), (iv) Jamaica Act 57 G 3 C 17 (1816), and Jamaica Act 19 V C 10 (1856). Concerning these Acts Alexander Heslop, the Jamaica Attorney General contended, "Though the first cited Jamaica Act had no suspension clause it did (if I may believe a contemporary memorandum) receive the royal assent, and the King sent an instruction even before it passed to the same effect as a standing rule to future Governors (Grant's (Jamaica) Reports p.62). The Act of Parliament first cited is empowering only (so far as removals from office are concerned) and the Jamaica Acts 21 G 3 C 25 and 19 VC 10 are conditionally prohibiting and imperative. The last cited Act has a suspension clause and only became operative on Her Majesty's express assent signified by publication in the Gazette. Here then was a seeming conflict of Colonial and Imperial Law. Prudence seemed to me to dictate that a Governor should not contravene the provisions of a Statute to which Her Majesty had given Her express assent even though the words of a comparatively old Act of Parliament might seem to sanction such a course."

On 25/2/1863 Newcastle to Eyre (CO 137/370). "I cannot think with the Attorney General that a power to remove officers expressly given to the Governor and Council by Act of Parliament can be taken away by an Act of the local Legislature which though confirmed by the Crown is plainly of inferior authority. With reference to the scope of the Imperial Act 22 G 3 C 75 the Attorney General is probably acquainted with "Willis V. Sir G. Gipp" 5 Moo. P.C. p.379", "Montagu V. Lt. Governor of Van Diemens Land" 6 Moo P.C. p.489, and "Robertson V. Governor General of New South Wales" 2 Moo P.C. p.288."

To this Dispatch the Attorney General replied. "In none of the three cases in Moore's P.C. Reports does it appear that there was any Colonial Statute at variance with the English Statutes 22 G 3 C 75 and 54 G 3 C 61".

Newcastle referred the matter to the English Law Officers whose advise is not traced. It does appear then that until Law 24 of 1879 Jamaica Judges stood unique among colonial judges as immune to removal at the instance of the Crown. In this respect they became the victims of Crown Colony Government which brought them back into the fold.

APPENDIX D

Governors of Jamaica

1661-62	General Edward D'Oyley	First Civil Governor
1662	Thomas, Lord Windsor	Governor
1662-64	Sir Charles Lyttleton	Deputy Governor
1664	Colonel Thomas Lynch	President
1664	Colonel Edward Morgan	Deptuy Governor
1664-1671	Sir Thomas Modyford, Bt.	Governor
1671-1674	Sir Thomas Lynch	Lt.-Governor
1674	Sir Henry Morgan	Lt.-Governor
1675-78	John, Lord Vaughan	Governor
1678	Sir Henry Morgan	Lt.-Governor
1678-80	Charles, Earl of Carlisle	Governor
1680-82	Sir Henry Morgan	Lt.-Governor
1682-84	Sir Thomas Lynch	Governor
1684-87	Col. Hender Molesworth	Lt.-Governor
1687-88	Christopher, Duke of Albermarle	Governor
1688-90	Sir Francis Watson	President
1690-92	William, Earl of Inchiquin	Governor
1690-92	John White	President
1692-93	John Burden	President
1693-1700	Sir William Beeston	Lt.-Governor
1700-02	Sir William Beeston	Governor
1702	Maj.Gen. William Selwyn	Governor
1702	Peter Beckford	Lt.-Governor
1702-4	Col. Thomas Handasyd	Lt.-Governor
1704-11	Sir Thomas Handasyd	Governor
1711-16	Lord Archibald Hamilton	Governor
1716-18	Peter Heywood	Governor
1718-22	Sir Nicholas Lawes	Governor
1722-26	Henry, Duke of Portland	Governor
1726-28	John Ayscough	President
1728-34	Maj.Gen.Robert Hunter	Governor
1734-35	John Ayscough	President
1735	John Gregory	President
1735-36	Henry Cunningham	Governor
1736-38	John Gregory	President
1738-52	Edward Trelawny	Governor
1741-42	John Stewart	Lt.-Governor
1747-48	John Gregory	President
1752-56	Admiral Charles Knowles	Governor
1756-59	Henry Moore	Lt.-Governor
1762-66	William H. Lyttleton	Governor
1766-67	Roger H. Elletson	Lt.-Governor
1767-72	Sir William Trelawny	Governor
1772-1774	Lt.Col.John Dalling	Lt. Governor

1774-1777	Sir Basil Keith	Governor
1777-1781	Col. John Dalling	Governor
1781-83	Maj.Gen. Archibald Campbell	Lt.-Governor
1783-84	Maj.Gen. Archibald Campbell	Governor
1784-90	Brig.Gen. Alured Clarke	Lt.-Governor
1790-91	Thomas, Earl of Effingham	Governor
1791-95	Maj.Gen. Adam Williamson	Lt.-Governor
1795-1801	Alexander, Earl of Balcarres	Lt.-Governor
1801-1805	Lt.-Gen. George Nugent	Lt.-Governor
1806-1808	Sir Eyre Coote	Lt.-Governor
1808-11	William, Duke of Manchester	Governor
1811-13	Lt.Gen. Edward Morrison	Lt.-Governor
1813-21	William, Duke of Manchester	Governor
1821-22	Maj.Gen. Henry Conran	Lt.-Governor
1822-27	William, Duke of Manchester	Governor
1827-29	Maj.Gen. Sir John Keane	Lt.-Governor
1829-32	Somerset, Earl of Belmore	Governor
1832	George Cuthbert	President
1832-34	Constantine, Earl of Mulgrave	Governor
1834	George Cuthbert	President
1834	Maj.Gen. Sir Amos Norcot	Lt.-Governor
1834-36	Peter, Marquis of Sligo	Governor
1836-39	Sir Lionel Smith	Governor
1839-42	Sir Charles Metcalfe	Governor
1842-46	James, Earl of Elgin	Governor
1846-47	Maj.Gen. Sackville Berkeley	Lt.-Governor
1847-53	Sir Charles Edward Gray	Governor
1853-56	Sir Henry Barkly	Governor
1856-57	Maj.Gen. E. Wells Bell	Lt.-Governor
1857-62	Captain Charles Darling	Governor
1862-64	Edward John Eyre	Lt.-Governor
1864-66	Edward John Eyre	Governor
1866	Sir Henry Storks	Governor
1866-74	Sir John Peter Grant	Governor
1874	W. A. Young	Administrator
1874-77	Sir William Grey	Governor
1877	Edward Rushworth	Lt.-Governor
1877	Maj.Gen. Mann	Administrator
1877-80	Sir Anthony Musgrave	Governor
1879-80	Edward Newton	Lt.-Governor
1880-83	Sir Anthony Musgrave	Governor
1883	Col. Somerset M. Wiseman Clarke	Administrator
1883	Maj. Gen. Gamble	Governor
1883-89	Sir Henry Norman	Governor
1889	Col. William Clive Justice	Administrator
1889-98	Sir Henry Arthur Blake	Governor
1898	Maj.Gen. Hallowes	Administrator

1898-1904	Sir Augustus Hemming	Governor
1904	Sir Sydney Olivier	Administrator
1904-7	Sir James Swettenham	Governor
1907	Hugh Clarence Bourne	Administrator
1907-13	Sir Sydney Olivier	Governor
1913-1918	Sir William H. Manning	Governor
1918-1924	Sir Leslie Probyn	Governor

APPENDIX E

Chief Justices of Jamaica

1661	Col. Ward
1661	Col. Barry
1662	Col. Mitchell
1662-5	Col. Thomas Lynch
1665-71	Sir Thomas Modyford
1671-74	John White
1675	Sir Thomas Modyford
1676-79	Col. Samuel Long
1679	Col. Byndloss
1681-83	Col. Samuel Long
1683	Samuel Bernard
1688	Roger Elletson
1689-95	Samuel Bernard
1695-98	Richard Lloyd
1698-1703	Nicholas Lawes
1703-05	Col. Peter Beckford
1703	Peter Heywood
1705-06	Lt. Col. John Walters
1706-16	Peter Heywood
1716-17	Thomas Bernard
1717-22	William Nedham
1722-3	Peter Bernard
1723-26	John Ayscough
1726-28	Edward Pennant
1728-33	Richard Mill
1733-35	John Gregory
1735-36	George Ellis
1736-39	John Gregory
1742	Dennis Kelly
1744	John Hudson Guy
1745	John Palmer
1746	William Nedham
1746	John Palmer
1749	John Hudson Guy
1751	John Palmer
1753-54	Rose Fuller
1754-56	Thomas Pinnock
1756-65	Thomas Fearon
1765-74	Thomas Beach
1774-1777	Mr. Webley
1777-1780	Mr. Welch
1780-1783	Thomas Finch
1783	John Grant
1793	William Jackson
1801	John Henckell
1801-08	John Kirby
1808-09	Mr. Redwood
1809-16	John Lewis

1816-21	Thomas Witter Jackson
1822-1831	William A. Scarlett
1832-1856	Sir Joshua Rowe
1856-1869	Sir Bryan Edwards
1869-1883	Sir John Lucie-Smith
1883-1894?	Sir Adam Gib-Ellis
1897	Sir H. B. Hancock
1897-1911	Sir Fielding Clarke

TABLE OF CASES

Allison (Orby) v. Long	APC Vol.2 No.1067
Barrett v. Lousada	Grant's (Jamaica) Report, p. 39
Beaumont v. Barrett	1 Moore's P.C. p. 59
Blankard v. Galdy	(1963) 2 Salkeld's Report p. 411
Calvin's Case	2 State Trials p. 559
Campbell v. Hall	(1774) 20 State Trials, p. 259
Daniel, ex parte Oliveres	(1786) Grant's (Jamaica) Report
De Osca v. The Lady D	(1962) 3 W.I.R. p. 515
Doyle v. Falconer	(1866) L.R. 1 P.C. p. 328
Ewart, in re David	CO 137/379 February 1864
Farjan v. de Wolf	(1910) Trinidad Royal Gazette p. 2433
Fenton v. Hampton	(1858) 11 Moore's P.C.C. p. 347
Forbes v. Cochrane	(1824) 2 B & C p. 448
Forsythe v. Yates	(1838) Morris' (Jamaica) Report p. 12
Freeman v. Farlie	(1828) 1 Moore's Indian Appeals p. 305
Gloucester House v. Peskin	(1961) 3 W.I.R. p. 375
Gordon et al v. F	(1843) Morris' (Jamaica) Report p. 71
Greenwood v. Livingstone	CO 137/189-20/6/1833
Hart v. Black	(1956) 7 J.L.R. p.56
Jacquet v. Edwards	(1866) Stephens (Jamaica) Reports Vol. 1 p. 414
Kielly v. Carson	(1842) 4 Moore's P.C.C. p. 63
Levy v. Moyston	10 CB 108
MacAllister v. Greyhound Packet	(1786) Grant's (Jamaica) Report p. 310
Mason v. Oldrey	CO 137/220 June 1837
Montagu v. Lt. Governor of Van Diemen's Land	6 Moore's P.C. p. 489
re Montefiori	(1787) Grant's (Jamaica) Report
Musgrave v. Pulido	(1880) 5 A.C.p.102
Ratcliffe v. Reid	Grant's (Jamaica) Report p. 8

R. v. Brownrigg	(1780) Grant's (Jamaica) Report p. 60
R. v. Custos of St. Andrew	(1784) Grant's (Jamaica) Report p. 148
R. v. Fell	(1777) Grant's (Jamaica) Report p. 29
R. v. Jones	(1778) Grant's (Jamaica) Report
R. v. Junor et al	(1933) J.L.R. p. 24
R. v. Motta	(1920) Clark's (Jamaica) Report p. 69
R. v. Pitter	(1934-5) J.L.R.
R. v. Rickerby	(1941) 4 J.L.R. p. 4
R. v. Royes	CO 137/470 December 1872
R. v. Stephens	(1888) Stephens' (Jamaica) Reports Vol. I p. 865
R. v. Vaughan	(1769) 4 Burrow Reports 2499
Robertson v. Governor General of New South Wales	2 Moore's P.C. p. 288
Rowley v. East	(1783) Grant's (Jamaica) Report p.102
Smith v. Brown et al	(1707) 2 Salkeld's Report p. 666
Somersett's Case	20 State Trials p. 79
Stulty v. Wallace	(1839) MacDougall's (Jamaica) Report p. 44
Tyrell v. Secretary of State for the Colonies	(1952) 2 Q.B. p. 482
West v. Reid	(1917-1932) Clark's (Jamaica) Report p. 255
Weldman v. Kemeys	(1785) Grant's (Jamaica) Report
Willis v. Sir G. Gipps	5 Moore's P.C. p. 379
The Yuri Maru, The Woron	(1927) A.C.906

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TABLE OF UNITED KINGDOM STATUTES

1535	27 Hen. 8 C 4	Offences at sea
1536	28 Hen. 8 C 15	Offences at sea
1660	12 Chas. 2 C 18	Trade and Navigation
1663	15 Chas. 2 C 7	Trade and Navigation
1665	17 Chas. 2 C 2	Religion
1670	22 Chas. 2 C 2	Religion
1673	25 Chas. 2 C 7	Plantation Duty
1696	7 and 8 W 3 C 22	Trade and Navigation
1696	7 and 8 W 3 C	Judges' Commissions
1697	9 W 3 C 26	Trade to Africa
1700	11 and 12 W 3 C 7	Piracy
1700	11 and 12 W 3 C 12	Colonial Governors
1717	4 Geo. 1 C 11	Piracy
1778	18 Geo. 3 C 12	American Colonies
1782	22 Geo. 3 C 75	Patentees
1806	46 Geo. 3 C 54	Admiralty
1807	47 Geo. 3 C 36	Slave Trade Abolition
1814	54 Geo. 3 C 61	Patentees
1832	2 W 4 C 51	Admiralty
1833	3 and 4 W 4 C 41	Privy Council
1833	3 and 4 W 4 C 73	Abolition of Slavery
1838	1 V C 19	Amendment of 3 and 4 W 4 C 73
1838	1 and 2 V. C 67	West India Prisons
1846	9 and 10 V.C 95	Small Debt Courts
1849	12 and 13 V.C 96	Admiralty
1851	15 and 16 V.C 87	Chancery
1854	17 and 18 V.C 104	Merchant Shipping
1857	20 and 21 V.C39	Colonial Attornies
1860	23 and 24 V.C 122	Admiralty
1863	26 and 27 V.C 24	Admiralty

1864	27 and 28 V.C 25	Naval Prize
1866	29 and 30 V.C 12	Government of Jamaica
1867	30 and 31 V.C 45	Admiralty
1869	32 and 33 V.C 71	Bankruptcy
1890	53 and 54 V.C 27	Admiralty
1894	57 and 58 V.C 60	Merchant Shipping

TABLE OF JAMAICA ACTS AND LAWS

1664	CO 139/1/33	Judicature
1664	CO 139/1/42	Slaves
1664	CO 139/1/55	Slaves
1664	CO 139/1/59	Justices of the Peace (Civil Jurisdiction)
1664	CO 139/1/59	Regulating fees of several offices of the island
1672	CO 139/2	Justices of the Peace (Civil Jurisdiction)
1672	CO 139/2	Suppression of Law-suits
1672	CO 139/2	Declaratory Act.
1673	CO 139/3	Establishing Supreme Court at St. Jago de la Vega
1673	CO 139/3/284	Suppression of Law-suits
1674	CO 139/1/109	Slaves/Christian Religion
1674	CO 139/1/127	Regulating fees of offices
1675	CO 139/4	Suppression of Law-suits
1675	CO 139/5/15	Foreign Attachment
1675	CO 139/5/36	Judicature
1675	CO 139/5	Prevention of Law-suits
1678	CO 139/6/83-4	Judicature (Procedure)
1681	33 Chas. 2 C 6	Justices of the Peace (Civil Jurisdiction)
1681	33 Chas. 2 C 8	Pirates
1681	33 Chas. 2 C 22	Prevention of Law-suits
1681	33 Chas. 2 C 23	Judicature
1683	35 Chas. 2 C 3	For settling the island
1683	35 Chas. 2 C 13	Declaratory Act.
1693	5 W & M C 3	Kingston - a Parish
1695	7 W 3 C 1	Free School in St. Andrew

1696	8 W 3 C 2	Slaves
1703	2 Anne C 1	Dividing St. Elizabeth into two Parishes
1703	2 Anne C 4	Revenue
1705	4 Anne C 4	Quarter Sessions and Common Pleas in Kingston
1711	10 Anne C 4	Regulating Fees
1717	4 Geo. 1 C 4	Slaves
1719	6 Geo. 1 C 5	Slaves (Inviegling)
1728	1 Geo. 2 C 1	Revenue
1732	4 Geo. 2 C 4	Crown Lands
1740	13 Geo. 2 C 6	Slaves
1749	22 Geo. 2 C 18	Slaves
1751	24 Geo. 2 C 10	Judiciary
1751	24 Geo. 2 C 17	Slaves
1758	31 Geo. 2 C 4	Assize Courts
1760	1 Geo. 3 C 22	Slaves
1760	1 Geo. 3 C 23	Slaves
1761	2 Geo. 3 C 8	Devises to Negroes
1763	4 Geo. 3 C 8	Attornies
1773	14 Geo. 3 C 3	Attornies
1776	17 Geo. 3 C 27	Judicature
1781	21 Geo. 3 C 15	Civil Disabilities of non-whites
1781	21 Geo. 3 C 23	Judiciary
1782	22 Geo. 3 C 17	Slaves
1788	28 Geo. 3 C 15	Customs
1795	35 Geo 3 C 9	Revenue
1796	36 Geo. 3 C 23	Free persons of Colour and Negroes
1801	41 Geo. 3 C 26	Slaves
1802	43 Geo. 3 C 30	Preaching
1804	45 Geo. 3 C 17	Judiciary
1806	47 Geo. 3 C 13	Judiciary

1807	48 Geo. 3 C 3	Slaves
1807	48 Geo. 3 C 17	Slaves
1809	50 Geo. 3 C 14	Supreme Court (Vice-Admiralty Jurisdiction)
1809	50 Geo. 3 C 16	Slaves
1810	51 Geo. 3 C1	Preaching
1810	51 Geo. 3 C 27	Administration of Justice
1813	54 Geo. 3 C 19	Free Persons of Colour
1816	57 Geo. 3 C 25	Slaves
1817	58 Geo. 3 C 18	Judiciary
1821	2 Geo. 4.C 16	Slaves
1822	3 Geo. 4 C 21	Slaves
1823	4 Geo. 4 C 15	Slaves
1823	4 Geo. 4 C 16	Free Persons of Colour
1826	7 Geo. 4 C 23	Slaves
1829	10 Geo. 4 C8	Slaves
1829	10 Geo. 4 C 29	Free Persons of Colour
1831	1 W 4 C 17	Free Persons of Colour
1831	1 W 4 C 25	Slaves
1833	4 W 4 C 4	Salary - Chief Justice
1833	4 W 4 C 36	Vagrancy
1833	4 W 4 C 41	Abolition of Slavery
1834	5 W 4 C 7	Treble costs to Stipendiary/ Justices
1834	5 W 4 C 44	Amending Abolition Act

1837	7 W 4 C 40	Larceny
1839	3 V C 18	Vagrancy
1839	3 V C 30	Combinations
1839	3 V C 45	Workhouses
1840	3 V C 65	Judiciary
1840	4 V C 50	Judiciary
1841	5 V C 21	Attornies
1841	5 V C 26	Common Pleas
1842	6 V C 23	Attornies
1844	8 V C 16	Revenue
1844	8 V C 20	Small Debts
1844	8 V C 28	Administration of Justice
1845	9 V C 42	Clerks of the Peace and Magistrates' Clerk
1847	11 V C 23	Juries
1847	11 V C 25	Small Debts
1849	13 V C 7	Administration of Criminal Justice
1849	13 V C 24	Justices of the Peace
1851	14 V C 43	Prospective Reduction
1851	14 V C 44	Appeals from Petty Sessions
1851	15 V C 9	Jury
1853	16 V C 15	Administration of Criminal Justice
1854	17 V C 22	Vice-Chancellor
1854	17 V C 29	Constitution
1855	18 V C 34	Court of Ordinary

1855	18 V C 50	Clerks of the Peace and Magistrates' Clerk
1856	19 V C 10	Judicature
1856	19 V C 23	Juries
1856	19 V C 37	Petty Debts
1857	20 V C 22	Clerk of the Supreme Court and Crown
1858	21 V C 10	Recovery in Petty Sessions of lands of small value
1858	21 V C 22	Appeal Regulation
1858	21 V C 27	Kingston Police Magistrate
1860	23 V C 1	Circuit Court
1860	23 V C 2	Circuit Court
1860	23 V C 3	Special Commission of Oyer and terminer
1861	24 V C 4	Incumbered Estates
1864	27 V C 15	Appeal Regulation Amendment
1864	27 V C 16	Administration
1864	27 V C 32	Offences against the Person
1864	27 V C 33	Larceny
1864	27 V C 34	Malicious Damage
1865	28 V C 35	Vexatious Suits
1865	28 V C 37	Common Law Pleadings
1866	29 V C 1	Rebellion Indemnity
1866	29 V C 11	Constitution
1866	29 V C 24	Constitution
1866	Law 2	Stipendiary Justices
1866	Law 3	Colonial Secretary
1866	Law 8	Changes in Executive Government
1867	Law 3	Revenue Commission
1867	Law 7	Land Tax and Quit Rents
1867	Law 8	Jamaica Constabulary Force

1867	Law 20	Reducing Number of Parishes
1867	Law 25	Clerks of the Peace and Magistrates' Clerks
1867	Law 33	Public Revenue Security
1867	Law 35	District Courts (General)
1867	Law 36	District Courts (Small Causes)
1867	Law 37	District Courts (Land Jurisdiction)
1867	Law 38	District Courts (Equity Jurisdiction)
1867	Law 39	District Courts (Criminal Jurisdiction)
1868	Law 7	Coroner
1868	Law 11	Evidence
1868	Law 28	Registrar and Clerk of the Court and Crown.
1868	Law 30	District Courts
1868	Law 34	District Courts - Insolvency
1868	Law 35	District Courts (Probate and Administration)
1869	Law 9	Attorneys at law
1869	Law 25	Court of Chancery
1869	Law 36	District Courts
1869	Law 41	Judiciary (Salaries etc.)
1869	Law 45	Advocates
1869	Law 46	Coroner
1869	Law 48	Juries
1870	Law 1	Assistant Attornies General
1870	Law 2	Judiciary
1870	Law 3	Clerks of Petty Session
1870	Law 4	Abolition of Petty Debts
1870	Law 22	District Courts
1871	Law 2	Removal to Kingston of Supreme Court

1871	Law 20	Abolition of Masters in Chancery
1871	Law 21	Grand Jury Abolition
1871	Law 22	Circuit Courts
1871	Law 25	Bankruptcy
1872	Law 18	Judiciary
1872	Law 24	Administration of the Criminal Law
1872	Law 25	Same
1872	Law 35	Provost Marshal Abolition
1872	Law 36	Barristers as Attorneys
1872	Law 41	Supreme Court Procedure
1873	Law 4	Court of Chancery - Lunatics
1873	Law 8	Commissions of Enquiry
1873	Law 18	Incumbered Estates
1874	Law 22	District Courts
1877	Law 17	Bankruptcy
1879	Law 14	Divorce
1879	Law 24	Judicature
1879	Law 33	Bankruptcy
1879	Law 39	Civil Procedure Code
1884	Law 13	Probate of Wills
1885	Law 17	Consignee's lien.
1885	Law 31	Attornies
1886	Law 28	District Courts. Court Fees
1887	Law 17	Resident Magistrates' Courts
1887	Law 43	Resident Magistrates' Courts
1888	Law 40	Civil Procedure Code
1891	Law 16	Resident Magistrates
1892	Law 7	Assistant Resident Magistrate, Kingston
1893	Law 4	Attornies at Law.
1894	Law 39	Resident Magistrates

1895	Law 26	Civil List
1896	Law 36	Solicitors
1896	Law 39	Jamaica Bar
1897	Law 10	Amending Law 39 of 1896
1897	Law 15	Amending Law 36 of 1896
1898	Law 36	Resident Magistrates' Courts
1900	Law 7	Criminal Law Appeal
1900	Law 18	Kingston Actions

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